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ABSTRACT

Intended to educate youth and parents about the rights and responsibilities of youth in society, this manual outlines the prevailing rules as well as U.S. and Illinois laws applying to youth. Separated into four categories, the manual explores the relationship of youth to society, youth to family, social controls on youth, and the rights and responsibilities of youth in schools. The integration of this information into the lives of children and young adults is designed to promote the preservation of rights and recognition of responsibilities which lie at the core of democracy. The pamphlet concludes with a description of additional resources available through the Constitutional Rights Foundation and information on how to obtain them. (TSV)

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Fifth Edition

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YOUTH AND SOCIETY

RIGHTS AND RESPONSIBILITIES

Fifth Edition

Constitutional Rights Foundation Chicago

Carolyn Pereira
Executive Director

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FOREWORD

Those who insisted, two hundred years ago, that the Constitution of the United States must include a Bill of Rights setting forth the fundamental rights of each person, recognized, as well, that the preservation of those rights would require that they be staunchly defended against those who would trade them for convenience and order. James Madison, addressing the Virginia Convention in 1788, sounded a warning that may be even more apt today than at that more formative time: "I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations."

A century and a half later, Franklin D. Roosevelt, during one of his "fireside chats," reflected on the balance that must be maintained between the government's obligation to protect and the people's need to ensure that, in doing so, the government does not overstep its bounds: "The only sure bulwark of continuing liberty is a government strong enough to protect the interests of the people, and a people strong enough *and well enough informed* to maintain its sovereign control over its government."

Neither the free exercise of fundamental rights, nor the ability to preserve and defend them, is possible without the knowledge and understanding of their practical application to our everyday lives. The same must be said for rights and entitlements provided by statute, such as those related to employment, social welfare and housing, to name but a few. Too often, those most in need are those least informed of what is available to help address their needs.

Knowledge of what is legally permissible or forbidden, particularly in the context of each person's interactions with others in society, is likewise of critical importance. Indeed those who advocate sacrificing fundamental rights in the hope of a more orderly and safe society often find their strongest arguments in the behavior of those who violate the law or otherwise fail to fulfill their lawful responsibilities.

This manual represents a practical and important contribution to the critical need to educate students, teachers and parents concerning the rights and responsibilities of the youth of our society -- those who will carry the torch of liberty and justice into the next generation. The integration of the information contained in this manual into the everyday lives of children and young adults will promote the preservation of rights and recognition of responsibilities which lie at the core of our democracy.

Richard J. Prendergast, President
Chicago Bar Association

INTRODUCTION TO THE FIFTH EDITION AND THE CONSTITUTIONAL RIGHTS FOUNDATION CHICAGO

The fifth edition of *Youth and Society* has been expanded and updated to include recent court decisions and laws which affect juveniles in both society and the schools, and to make this a more comprehensive and informative sourcebook for youth and adults who work with youth. Like any sourcebook, it cannot address every possible situation or how the law will be applied in those situations. Rather, *Youth and Society* outlines the prevailing rules and laws that apply in a variety of areas that affect youth. Call an attorney or a bar association for help with specific legal problems.

The fifth edition is just one resource provided by the Constitutional Rights Foundation Chicago (CRFC). CRFC is committed to helping young people understand our country's legal and governmental system. CRFC helps elementary and high school students develop the skills and attitudes necessary to serve their communities and nation as responsible citizens.

CRFC achieves its mission by:

- Training teachers in the law and age-appropriate teaching methods.
- Recruiting and preparing lawyers, judges, police officers, and other law-related professionals to work with teachers and students.
- Developing innovative materials for K-12 classrooms.
- Bringing students from diverse backgrounds together to work with one another and learn about legal and political issues.

The Chicago office of the Constitutional Rights Foundation was opened in 1974 as an offspring of the Constitutional Rights Foundation in Los Angeles. In 1990, the Chicago program established an independent Board of Directors and became autonomous. The Constitutional Rights Foundation Chicago has support from the federal government, law firms, foundations, corporations, state government, and individuals.

Formal evaluations conclude that law-related education programs, when properly implemented, statistically reduce delinquency. Teachers who use law-related education report increases in student motivation, learning and enthusiasm.

CRFC is a not-for-profit, non-partisan organization. For information about CRFC's other materials and programs, please call or write.

Carolyn Pereira
Executive Director
Constitutional Rights Foundation Chicago

SOURCES AND CITATIONS

Citations follow *A Uniform System of Citations*, 14th ed., Harvard Law Review Association (1986).

A description of how to look up a law case can be found in "How to Use a Law Library." This pamphlet may be purchased from the Constitutional Rights Foundation, 601 South Kingsley Drive, Los Angeles, CA 90005. The toll free order number is (800) 488-4CRF.

THE FAMILY RELATIONSHIP

PARENTAL RIGHTS AND RESPONSIBILITIES

Parents are required by law to properly care for their children. When they do not, the child could be found to be neglected or abused. While there is no fixed definition for child neglect, it is generally considered to occur when the parents, either willfully or unintentionally, disregard their parental duties. [*In re Walter B.*, 169 Ill.Dec. 787, 592 N.E.2d 274, 227 Ill.App.3d 746, appeal denied *People v. Walter B., Sr.*, 176 Ill.Dec. 819, 602 N.E.2d 473, 146 Ill.2d 649 (1992)] A neglected child is a child under 18 years of age whose parents do not provide the proper or necessary support, medical care, food, clothing, shelter or supervision. A newborn infant whose blood or urine contains any amount of a controlled substance is a neglected minor. An abused child is a child under 18 years of age who is physically abused, sexually abused, tortured or receives excessive corporal punishment. [705 ILCS 405/2-3 (1992)]

Although parents may discipline their children when necessary, they have no right to abuse their children. The Illinois Department of Children and Family Services (DCFS) should be contacted if a child is being abused or neglected. The DCFS Hotline for reporting cases of abuse or neglect can be reached by calling 1-800-25-ABUSE. The local police, the state's attorney's office, or a lawyer may also be of help.

If at some time parents do not or cannot care for a child properly, a juvenile court judge could place the child in a foster home or other appropriate setting. [705 ILCS 405/1-1, *et seq.* (1992)] Parents may be reunited with their child when a judge feels they have corrected the problems which caused the child to be removed from the home. Sometimes counseling is required by the court.

Parents may lose a child forever if they are either unable or unwilling to care for their child. Before any action can be taken by the judge, the child must be represented by a lawyer. If there is no money to pay for an attorney, the court will appoint one.

Parents traditionally have been given a great deal of control over their children's lives. This is slowly changing in some areas. For example, minors have the right to birth control information, abortions, and treatment for venereal disease without parental consent. While minors may receive abortions without parental consent, the United States Supreme Court has ruled that parents be notified in some situations when their unemancipated minor daughters are seeking an abortion.

Under the Parental Responsibility Law, parents may have to pay for damages their child caused as a result of a willful or malicious act. [740 ILCS 115/1 (1993)] In some cases, parents may be found negligent if they allow their child to do something illegal (such as allowing the child to drive their car without a license). Parents may be liable for up to $1,000 in damages.

Guardians

In cases where a child is found to be neglected, abused or dependent (where the parents are dead, physically or mentally disabled or the child is without proper medical care through no fault of the parents), or where the parents agree, a guardian can be appointed by the court. When reading this manual is it safe to assume that the words guardian and parent can be interchanged.

A guardian has the same duties of control, discipline, and support as a parent, but a guardian cannot consent to adoption of a minor unless the guardian is given that authority by the court. [705 ILCS 405/1-3(8) (1992)]

BREAKING THE FAMILY BONDS

All persons reach majority at the age of 18, meaning that the person is then held to the same level of responsibility as all other adults. The person is emancipated. An 18-year-old may sign and be responsible for contracts, marry without parental consent, and generally run his or her own life. Emancipation before age 18 can occur by voluntarily leaving a parent's home, marrying, or joining the armed services. [*In re Marriage of Walters*, 178 Ill.Dec. 176, 604 N.E.2d 432, 238 Ill.App.3d 1086 (1992)]

Emancipation means that a minor is no longer subject to parental authority. Parents do not have to care for an emancipated child. [*Zozaski v. Mather Stock Car Co.*, 312 Ill. App.585, 38 N.E.2d 825 (1942)] The court can declare a minor emancipated if the minor has shown the ability to manage his or her own affairs and to live independently. A minor cannot be declared emancipated if his or her parents object. [750 ILCS 30/1, *et seq.* (1993)] Being an "unwed mother" does not emancipate a minor.

Along with the rights of emancipation come the responsibilities of self-support.

MARRIAGE

In Illinois marriages are categorically prohibited if they involve polygamy, homosexuality, or close blood relatives. [750 ILCS 5/212 (1993)]. Generally, in Illinois a person may not marry someone who is already married, or of the same sex. Further, a person may not marry a near blood relative, such as a brother, sister, first cousin, aunt, or uncle. Both persons must also be 18 years or older to be married without parental consent or court approval. If either person is under 18, a parent or guardian may go to court and get the marriage annulled (*i.e.*, voided).

If a minor is over 16, a parent or guardian may give permission to marry. The minor must have the consent of both parents or the consent of one parent plus a signed affidavit from the consenting parent stating that the other parent cannot be located. The parent or guardian must accompany the minor when applying for a license, and sign a consent form. [750 ILCS 5/203 (1993)] Parents who have consented to the marriage of their children cannot change their minds after the marriage and try to get it annulled.

A minor who is over 15 may go to court to get permission to marry from a judge. The judge may grant permission under certain conditions. [750 ILCS 5/208 (1993)]

If a minor lives and marries in a state which allows marriage at an earlier age and then moves to Illinois, the marriage will be valid in Illinois. But a marriage could be annulled if a minor who is an Illinois resident gets married in another state just to avoid the age requirement. [750 ILCS 5/216 (1993)]

Women may decide to keep their maiden name when they marry instead of using their husband's name. If a woman who has used her husband's name wishes to resume using her maiden name, she can change it back through the courts. Under certain circumstances, a woman can resume using her maiden name by following other less costly, but perfectly legal, means.

ANNULMENT AND DIVORCE

There is a difference between annulment and divorce. Annulment means to make legally void. If a couple has their marriage annulled, it is as if they were never really legally married. A divorce, however, recognizes the fact that they were once married.

Illinois adopted a no-fault divorce law which took effect July 1, 1984. The law requires that a couple live apart continuously for two years prior to filing for a no-fault divorce. [750 ILCS 5/401(2) (1993)] This two-year provision can be jointly waived by the parties after six months of living apart. No-fault divorces (neither spouse is at fault) are given to couples who decide together that they no longer wish to be married.

A person may want to handle his or her own divorce without the assistance of an attorney. Several groups in Chicago are available to help; these include American Society of Divorced Men (ASDM) at (708) 695-2200, and the IIT/Chicago-Kent Law Offices at (312) 567-5050. A person with a low income should contact his or her local Legal Assistance office.

Divorce is a very difficult situation for all involved, especially for children. In determining which parent should have custody of a child, judges will give consideration to the child's welfare and best interests. The Courts have held that it is not absolutely necessary to ask the children for their preference, or to heed their choice when circumstances merit. [*In re Marriage of Balzell*, 152 Ill.Dec. 492, 207 Ill.App.3d 310 (1991). *In re Marriage of Apperson*, 154 Ill.Dec. 864, 215 Ill.App.3d 378 (1991)] The judge will consider what the child has to say in making the decision, though in all cases the judge makes the final decision. Each parent's relative financial circumstances may be considered in a custody dispute. The right of the parent to care for the child means the responsibility of support. [S.H.A. Ch. 40 Sec. 602, *In re Marriage of Fahy*, 153 Ill.Dec. 594, 208 Ill.App. 3d 677 (1991)] Conduct of the parents may also be considered in determining what is in the child's best interest. [*Id.* at 677, and *In re Marriage of Wiley*, 145 Ill.Dec. 191, 199 Ill.App. 3d 169 (1990)]

HAVING CHILDREN

Because children bring large responsibilities, raising them may very well be the most difficult task adults have. Children need love, understanding and discipline, as well as sufficient food, clothing, and shelter. Child raising is easier and more rewarding when both parents cooperate. The law states that both parents are responsible for raising and supporting a child [750 ILCS 45/3, 45/19 (1993)], even if the parents are not married and are under 18.

If one parent does not share in supporting the child, the other parent can go to court. The court may then order that the neglectful parent help support the child by paying a certain amount of money each month. These monthly payments are called child support. If the parent does not obey this court order, he or she may be sent to jail.

If the parents are not married, a mother may file a paternity suit against an alleged father to prove that he is the father. A paternity suit must be brought within two years of the birth of the child. An independent action may be brought on behalf of the child before the child turns twenty. [750 ILCS 45/8 (1993)] If the court decides that the man is the father, he will be required to furnish child support. A man is presumed to be the father of a child if the child was born or conceived during the marriage or if the parents married after the birth and named the father on the birth certificate. [750 ILCS 45/5 (1993)] When these circumstances do not exist, other facts are considered to determine whether a man is the father of the child.

The law used to discriminate against children whose parents were not married. Generally, the law no longer discriminates against children of unmarried parents. Today, however, birth status is still of legal importance in matters of inheritance. A child of unmarried parents usually inherits only from the mother unless the father specifically

provides for the child in his will, or acknowledges he is the father by going through the court, or has his name put on the birth certificate or makes other affirmative gestures. The mother and father must marry or the child must be adopted by the father to gain all of the rights possessed by children born to married parents. In the U.S. Supreme Court case regarding "Baby Richard", the natural father was awarded custody even after what appeared to have been a valid adoption. [*In re Petition of John and Jane Doe*, No. 76063.] This will most certainly lead to legislation in the near future clarifying adoption law.

If a mother wants to have her baby adopted by a man other than the father, the father must always be notified. [*Stanley v. Illinois*, 405 U.S. 645 (1972)] If his whereabouts are unknown, a notice is published in a newspaper. Some fathers may wish to care for their children themselves and may seek custody or get visitation rights.

HEALTH

In Illinois, unless a person is married, pregnant, or over 18, parental consent is required for medical and surgical treatment, even nose jobs, diet pills, and ear piercing. [410 ILCS 210/1 (1993)] Certain exceptions are set forth below.

1. In an emergency, a minor can be treated without parental consent if, in the opinion of a doctor or dentist, the minor's health would be seriously affected by waiting to obtain permission. [410 ILCS 210/3 (1993)]
2. If a minor's parents do not consent to treatment and the doctor feels that treatment is needed to save the patient's life, a petition may be filed in juvenile court. There a judge may temporarily take the minor from the parents' custody and select a temporary legal guardian solely for the purpose of consent to the treatment. This is done only for very serious cases when a life is at stake. A minor may refuse medical treatment him or herself if a court determines that the minor is mature enough to make a decision to refuse lifesaving treatment. [*In re E.G.*, 133 Ill.2d 98, 549 N.E.2d 322 (1990)]
3. A doctor may give birth control information and service to someone under 18 who is either married, a parent, or pregnant, or if that person is referred for such service by another doctor, a member of the clergy, or a family planning agency. [325 ILCS 10/1 (1993)]
4. Anyone 12 years or older may consent to treatment for venereal disease and drug addiction without parental consent. [410 ILCS 210/4 (1993)]
5. A hospital, physician and other medical personnel may treat and counsel a victim of criminal sexual assault or abuse without obtaining consent of the minor's parent. [410 ILCS 210/3 (1993)]
6. Twenty-four hours' notice is required to both parents of a pregnant minor prior to an abortion. The minor can petition the court for a waiver of the notice requirement. [410 ILCS 520/4 (1993)]

As a practical matter, doctors are often unwilling to do any medical procedure without a parent's consent because of the risk of a medical malpractice suit.

THE RELATIONSHIP OF YOUTH TO SOCIETY

WORKING

Labor Laws

Child labor laws are set by the federal, state and local governments to protect the educational opportunities of minors and to prohibit the employment of minors in certain jobs and work settings that may be detrimental or hazardous to their health and well-being. Nevertheless, minors are not barred from all job opportunities. Everyone, however, must have a social security number to hold a job. Contact the Social Security office for more information at (800) 772-1213.

Federal and state laws govern the kinds and hours of work minors can perform. These laws vary with respect to farm and non-farm work, as well as age. Generally, a person under 16 may work in any job which is non-hazardous. The number of hours a person can work a day or week is determined by the person's age, the nature of the job and whether school is in session. For example, if you are 15 or younger you may not work more than three hours a day when school is in session. [820 ILCS 205/3 (1993)] However, the number of hours of farm work is unlimited as long as you work outside of school hours.

Work Permit

Persons with work permits may apply for a wider variety of jobs. One must be at least 16 years old to get a work permit. However, most employers looking for full time employees prefer applicants who have high school diplomas. Information on getting a work permit is available from school counselors and from the offices of regional superintendents of schools.

The laws regarding child labor are numerous. Questions regarding child labor matters should be directed to the Illinois Department of Labor in Chicago at (312) 793-2800 or the United States Department of Labor at (312) 353-8145.

Minimum Wage

There are federal and state minimum wage laws. As of April 1991, the federal minimum wage is $4.25 per hour. As of April 1991, the Illinois minimum wage for persons under 18 is $3.75 per hour, and $4.25 per hour for persons 18 or over. For more information on the minimum wage laws contact the Illinois Department of Labor Minimum Wage and Overtime Department at (312) 793-2804 or the United States Department of Labor's Wage and Hour Division in Chicago at (312) 353-8145.

Discrimination in Employment

A person may not be discriminated against because of race, color, religion, sex, national origin or ancestry, age, marital status, disability, or unfavorable discharge from military service. Thus a person may not be refused employment, fired, paid a lesser wage, or refused a promotion on the basis of these criteria.

Under the Americans with Disabilities Act [42 U.S.C. §§ 12101, *et seq.* (1990)], employers may not discriminate against an individual with a disability in hiring or promotion if the person is otherwise able to perform the essential functions of the job with or without "reasonable accommodation". Employers will also need to provide reasonable accommodations to individuals with disabilities. Employers with 15 or more employees must comply with the Americans with Disabilities Act, as of July 26, 1994.

Although a person may not be discriminated against because of national origin, it is illegal for an employer to knowingly hire an *illegal* alien. [8 U.S.C.A. § 1324a(a)(1)(A) (1988)] It is also unlawful for an employer to hire a person unless he or she asks for proof of United States citizenship or lawful admission to the United States. Proof includes a United States passport, a resident alien card, birth certificate, driver's license, and state I.D. cards. [8 U.S.C.A. § 1324a(b)(1)(B-D) (1986)]

A person who feels that he or she has been treated unfairly or discriminated against can fill out a written complaint at the Illinois Human Rights Department. This must be done within 180 days of the discriminatory act. The charge will be investigated to determine whether there is sufficient evidence to pursue the case. If there is insufficient evidence, the case will be dismissed. A dissatisfied complainant has the right to appeal the decision to the Commission on Human Rights within 30 days of notification of the dismissal. [775 ILCS 5/7A-102 (1992)]

The Illinois Human Rights Department was established July 1, 1980. It combines the functions of the Equal Employment Opportunity Department, the Illinois Fair Employment Practices Commission, and the Commission on Human Relations into one department. For more information, call the State of Illinois office in Chicago at (312) 814-6200 or the Springfield office at (217) 785-5100.

Income Taxes

All minors, if they earn over a certain amount, must pay federal and Illinois income taxes. These earnings are not included on parents' income tax returns. [Internal Revenue Code, Section 73a]

Even if a person doesn't earn enough to pay taxes, income tax returns for the state and federal governments have to be filed to claim a refund of taxes withheld. Check with the Internal Revenue Service in Chicago at (312) 435-1040, and the State of Illinois Department of Revenue at (800) 732-8866 for further and up-to-date information.

At majority, everyone must file an income tax return even if he or she owes *no* tax.

SOCIAL WELFARE PROGRAMS

Federal Programs

Social Security (FICA)

FICA (Federal Insurance Compensation Act -- sometimes referred to as social security) is a federal insurance policy which provides financial benefits to people when they retire (age 62 and older), and/or if they become disabled. Financial benefits may also be payable to a worker's family when a worker dies or retires. An employer pays half of the FICA premium and the employee pays the other half. A self-employed person pays both the employer's and the employee's portions. A person who does not pay FICA taxes may not be eligible for benefits. Minor and disabled children of persons fully insured under FICA are eligible for benefits.

Some FICA benefits have been phased out. Aid to students 18 years of age and older whose insured parents have died or retired is no longer available. However, benefits are paid to high school students up to age 19.

Students and minors generally have to contribute a part of their salary toward FICA; there are exceptions such as salary received from an employer who does not participate in the Social Security program.

For more information, contact a Social Security office. The toll free number is (800) 772-1213.

Supplemental Security Income (SSI)

The Supplemental Security Income (SSI) program is administered by the Social Security Administration. A person who is disabled, blind, or at least age 65 may receive SSI if he or she meets certain financial eligibility requirements. The person must be a United States citizen or legally admitted alien. Because SSI is funded by general revenues, someone who is otherwise qualified may receive the benefits without paying FICA taxes. For more information, contact a Social Security office.

Food Stamps

The Food Stamp program is supported by the U.S. Department of Agriculture and the Illinois Department of Public Aid. Food stamps and Aid to Families with Dependent Children (AFDC) (see below) can be applied for at the same time. Persons not already receiving AFDC may qualify for food stamps if they are 18 or older and meet certain financial eligibility requirements based on income, expenses and need.

Food stamps are sent in the mail. Persons may get food stamps quickly if they give their name and address, sign an application, give proof of their identity, have $100 or less in cash and have a minimal monthly income.

Food stamps can be used at retail stores or shelters for the homeless to purchase only food, or seeds or plants to grow for food. Food stamps cannot be used for alcohol, tobacco, paper goods, or hot prepared food (such as deli items). [7 U.S.C. § 2012(g) (1988)] Call the Office of Inquiry for Public Aid in Springfield at (800) 252-8635, or in Chicago at (312) 793-4706 for information regarding this program.

State and Local Programs

Aid to Families with Dependent Children (AFDC)

Parents who cannot support their children may be able to get money from the AFDC program administered by the Illinois Department of Public Aid. There are certain financial eligibility requirements that must be met before AFDC benefits can be paid depending on a family's income, expenses, and need. One parent must be physically or mentally unable to work, dead or unemployed (or employed fewer than 100 hours per month), or not living in the home. In addition, a pregnant woman who is not living with the father of the expected child, and has no other dependent children, can receive AFDC to the extent that federal law permits and federal matching funds are available.

A person who qualifies for AFDC will receive a "green card". A green card can be used to receive free medical care for the green card holder, as well as his or her children. However, not all doctors and hospitals accept this card. A person may also qualify for social services, such as day care services. For more information, contact the Office of Inquiry for Public Aid.

General Assistance

The Illinois Legislature made significant changes to the General Assistance program effective July 1, 1992. [305 ILCS 5/6-11] One program, State Transitional Assistance, provides money for a person who is chronically needy and ineligible for assistance under any other provisions of the Public Aid Code. To receive funds that individual must be 18 or older, or be married and living with a spouse.

Another program, State Family and Children Assistance, provides money for families with children and pregnant women who are not eligible for other types of public aid, such as AFDC. Again, financial eligibility depends on income, expenses, and needs. Call the Office of Inquiry for Public Aid for information on how and where to apply. In Chicago, call the Public Welfare Coalition at (312) 829-5568.

Medicaid

A person receiving AFDC is automatically eligible for medical benefits under the Medical Assistance Program (Medicaid) administered by the Illinois Department of Public Aid (IDPA). Individuals or families who do not need assistance to meet their general living costs but who do require help in meeting the cost of medical bills may also apply for medical assistance.

Aid to the Aged, Blind and Disabled (AABD)

AABD is "stopgap" welfare money that the State pays to people until they get SSI. Persons may get AABD benefits while they have an SSI application pending or on appeal, or if they have been approved for temporary SSI.

State Supplemental Payments to the Aged, Blind or Disabled (SSP)

A person 65 or older, blind, or severely disabled (as defined by the Social Security Administration), may qualify for State Supplemental Payments (SSP). SSP recipients are eligible for medical assistance. To qualify for SSP, a recipient must be a U.S. citizen or have legal alien status, must be living in Illinois with intent to remain, and must meet certain financial eligibility requirements based on income and expenses.

Medical assistance and SSP recipients may also qualify for food stamps, funeral and burial expenses, as well as information and referral to other social services, such as housekeeping services.

An alien with lawful permanent residence or who is lawfully permanently residing in the United States, may be eligible for certain kinds of public aid. Contact the Office of Inquiry for Public Aid for more information on this program.

NOTE: Anyone who is turned down for or terminated from these programs and thinks a mistake was made has the right to appeal the decision. The person must file an appeal within 60 calendar days of the denial. Appeal forms can be obtained from the IDPA office. A formal hearing must be held within 90 days of the filing of the appeal. At the hearing, applicants may be represented by counsel, see their case file, and bring witnesses.

TRANSPORTATION

Motor Vehicles

In order to legally drive most vehicles, a driver's license or instruction permit must be obtained from the Illinois Secretary of State. Driver's licenses are classified for various vehicles.

A person who is 15 years of age or older and is enrolled in an approved driver education course may get an instruction permit to operate an automobile. This allows a person to drive a car when accompanied by a driver education instructor or a licensed driver who is at least 18 years old and who has been licensed for at least one year. [625 ILCS 5/6-103, 5/6-105 (1994)]

A minor who is at least 16 may get a driver's license with the written consent of either parent or a legal guardian. The minor must also present proof of successful completion of an approved driver education course. [625 ILCS 5/6-107 (1994)]

A person who is at least 18 years old may get a driver's license without the written consent of a parent or guardian. A person under 17 who drives after curfew hours must have a parent, legal guardian, or someone 18 or older with them. This person must be approved by the minor's parent or legal guardian. Local police will provide information about the curfews in effect in your area.

The *Rules of the Road* manual, published by the Illinois Secretary of State, has complete information on drivers' licensing and traffic laws. The Secretary of State also publishes *Rules of the Road for Second Division Vehicles*, which contains information for drivers of trucks and other large vehicles.

Driving is a privilege, not a right. It is the driver's responsibility to obey all traffic laws, to operate a safe vehicle, and to carry adequate insurance.

Insurance is now mandatory in Illinois. The penalties for driving without insurance include a minimum $500 fine and suspension of vehicle registration for at least 2 months.

For more information, call or write the Secretary of State's Office, Driver Services Department, 2701 South Dirksen Parkway, Springfield, Illinois 62723, (217) 782-6212, or a local branch office.

Drunk Driving

During the past two years, more Americans have died in accidents caused by drunk drivers than in the Vietnam War. As a result of growing public concern over drunk driving accidents, penalties have been increasing in recent years for those convicted of driving under the influence of alcohol (DUI).

Illinois has an "implied consent" law, which means that any driver on Illinois roads is required to submit to breath, blood and/or urine tests following arrest for DUI. Refusal to take such tests results in a "summary suspension" of driving privileges. [625 ILCS 5/11-501.1 (1994)]

Under the summary suspension law, a first offender whose blood alcohol concentration is found to be 0.10 percent or greater will have his or her license suspended for at least three months. If a first offender refuses the test, the suspension period is at least six months. A second offender within a five-year period will have his or her license suspended for at least 12 months for failing the test, or at least 24 months for refusal to take the test. Upon arrest, the driver will be issued a temporary receipt allowing him or her to drive for 45 days. During this 45-day period, the driver may request a judicial hearing on the suspension. However, a delay in the hearing will not prevent the suspension 46 days after arrest.

Illinois also has a summary suspension law for drivers found with any trace of any illegal drug (including marijuana) in their bodies. Regardless of whether the person is a first or multiple offender, a three month suspension will result from tests showing any trace of these substances. [625 ILCS 5/6-208.1 (1994)]

A suspected offender may also be charged under the DUI laws, in addition to the summary suspension procedures. A person convicted of DUI will have his or her license revoked for a minimum of one year for a first offense. A first offender may also be fined up to $1,000 and imprisoned for up to one year. Persons convicted of DUI a second time within 20 years will have their license revoked for at least three years. Second offenders will also receive a minimum of two days in jail or ten days of community service, and a fine of up to $1,000.

A person arrested for DUI should immediately contact an attorney because of the severe penalties that may result from a conviction.

Motorcycles

A special license is required to operate a motorcycle. The *Rules of the Road* manual has information concerning motorcycle licenses. The *Motorcycle Operator Manual*, published by the Illinois Secretary of State, also contains important information for motorcyclists.

Bicycles

Generally, the same rules that apply to driving a car apply to riding a bicycle. However, no license is required and children may ride bicycles. The Secretary of State publishes a special pamphlet, *Bicycle Rules of the Road*, on this issue.

Hitchhiking

It is against the law to hitchhike. [625 ILCS 5/11-1006 (1994)]

CONTRACTS

A contract is an oral or written agreement between two or more people to do something in return for something else. Layaway plans, charge accounts and installment plans are all contracts.

Generally, a minor who enters into a contract is not bound by the terms of the contract. Minors can choose to void their contracts at almost any time. Because minors are allowed to void their contracts, landlords, merchants, loan companies, and other adults rarely contract with persons under 18. However, a contract entered into by a minor may bind that person if he or she does not reject it within a reasonable time after reaching majority. [*Dixon National Bank v. Neal*, 5 Ill.2d 328, 125 N.E.2d 463 (1955); *Shepherd v. Shepherd*, 408 Ill. 364, 97 N.E.2d 273 (1951); *Perry v. Saleda*, 34 Ill.App. 3d 729, 340 N.E.2d 314 (3d Dist. 1975)] An adult, however, cannot break a contract with a minor as long as the minor continues to execute the terms of the contract.

There are certain cases in which a minor is bound by a contract. Some examples are:

1. loans received for the necessities of life (food, clothing, medical care), education, or for life, health or accident insurance [*Pelham v. Howard Motors, Inc.*, 20 Ill. App. 2d 528, 156 N.E.2d 597 (1st Dist. 1959)];
2. Illinois college loans [815 ILCS 155/1 (1994)];
3. savings or bank accounts in a minor's name [205 ILCS 5/45 (1994)];
4. consent papers to have an abortion. [*Wynn v. Scott*, 449 F. Supp. 1302 (N.D. Ill. 1978); 720 ILCS 515/4 (1994)] For more information on minors and abortion, see the section on "The Family Relationship"; and
5. medical care in matters relating to drugs or alcohol, sexual assault or abuse, venereal disease, mental health, and giving blood. [410 ILCS 210/1, *et seq.* (1994)].

For more information on medical matters, see the section on "Health".

Certain laws regarding contracts have been enacted to protect the buyer from certain sales pressure techniques and practices. These are governed by an Illinois statute. [815 ILCS 505/1, *et seq.* (1994)] Examples of these laws are set forth below.

1. A seller cannot resort to unfair competition or deception -- such as misrepresenting something or not telling the buyer all the facts if they are important -- in order to make a sale. A seller also cannot ask the buyer to give the names of other prospective buyers in return for compensation.
2. If a person buys, leases, or rents something for $25.00 or more due to a salesperson's personal visit to the buyer's home -- and the salesperson was not asked to come -- the buyer may void the contract or sale by notifying the seller within three full business days and returning the merchandise in its original condition. The three-day period does not begin until a notice that the order may be canceled within three days is given to the buyer by the seller. The seller must give the buyer the address and phone number where the seller can be reached. This does not apply to sales or rentals of real property, insurance, or securities.
3. A buyer under 18 may void the contract because of age.
4. If a person's application for credit is rejected, the seller cannot keep the down payment. Retaining it as a fee for investigating a credit history or to cover "depreciation" of the merchandise is unlawful.
5. If someone buys something on an installment plan and then defaults (fails to pay), the seller cannot sell the merchandise at a lower price and increase the balance owed by the original buyer when the merchandise was repossessed.
6. No creditor or agent of a creditor may attempt to collect a debt by contacting a debtor's employer unless there has been a default of payment for at least 30 days, and at least five days' notice of an intention to contact the debtor's employer has been given.

If a contract contains a provision that discriminates or appears to discriminate against someone on the basis of race, color, creed, national ancestry, sex, ethnic, or religious grounds, or on the basis of any connection between that person and any other entity, that provision is invalid.

The best advice for anyone entering into a contract is to read it carefully and be sure to understand it before it is signed! Be sure there are no blank spaces where changes could be made, and be sure to get a copy of the signed contract.

LANDLORD/TENANT

Discrimination in Housing

It is a federal civil rights violation to discriminate in housing on the basis of race, color, religion, sex, familial status, or national origin. [Civil Rights Act of 1968, Title VIII Sec. 804, 42 U.S.C. § 3604 (1988)]

It is also illegal to refuse to become involved in a real estate transaction based on discrimination or familial status. A landlord or seller cannot tell an interested tenant or buyer that available property is unavailable for rental or sale just because of a person's race, color, religion, national origin, ancestry, age, sex, marital status, disability, an unfavorable discharge from military service, or because a person is under 18 years old and lives with his or her parents or guardian. [775 ILCS 5/3-101 et seq. (1994)]

For more information on discrimination, see the section on "De Jure Segregation and Discrimination."

Eviction

Only the sheriff may legally evict (remove) a tenant from a dwelling, and only with a court order. The landlord must sue the tenant to get that court order, and then deliver the order to the sheriff. However, many written leases include provisions in which the tenants agree that the landlord may evict them with *or without* due process of law in the event of a default. There is an Illinois statute which makes this type of provision unenforceable. [735 ILCS 5/9-102 (1994)]

A landlord who wants to have a tenant evicted because of non-payment of rent must give the tenant a five-day notice, unless the lease includes a waiver of the notice. This notice says that the tenant must pay the rent or leave the premises within five days. If the tenant still has not paid the rent *after* the five days have elapsed, the landlord can file suit. If the tenant tries to pay the full rent within the five-day period and the landlord does not accept it, the landlord *cannot* evict. [735 ILCS 5/9-209 (1992)] Some local governments have enacted ordinances that protect tenants in their dealings with other tenants. To find out if your city or village has such an ordinance, contact your local building department.

Utilities

Depending on provisions in the lease, the landlord may be responsible for payment of some or all of a tenant's utility bills. If a landlord is responsible for payment and fails to make payment, the tenants may pay the past due costs, and service must be restored if it has been cut off. The tenants may deduct the amount paid by them from the rent due on the lease. The utilities in any building with three or more apartments cannot be cut off for non-payment until the utility company gives notice to all tenants. [765 ILCS 735/1 (1992)] The notice shall allow the tenants at least ten days to pay the arreared amount, or allow the tenants to petition the court to have a receiver appointed to collect rent to satisfy the outstanding amount. [765 ILCS 735/3 (1992)].

Security Deposits

The landlord of a building of 25 or more living units must pay the tenant at a rate equal to the interest rate paid by the largest commercial bank in the State of Illinois for a passbook account as of December 31 of the year preceding the inception of the lease on the security deposit if it is held more than six months. The interest must be paid after the end of each 12 month rental period, unless the tenant owes the landlord money. [765 ILCS 715/1 (1994)]. A landlord who is found by the court to have willfully failed or refused to pay the interest can be fined an amount equal to the amount of the security deposit, court costs, and reasonable attorneys' fees.

The landlord of a building of five or more units must give a tenant a list of damages with estimates or receipts for repairs within 30 days after the premises are vacated. If the landlord gives price estimates, actual receipts must be submitted within 30 days after the first notice was sent. If a landlord does not give these notices and receipts, the landlord must return the security deposit within 45 days of the date the tenant vacated the premises. [765 ILCS 710/1 (1992)]

If the court finds that a landlord has refused to supply the itemized statement or has supplied it in bad faith and has failed or refused to return the security deposit within the time limits provided, the landlord can be fined an amount equal to twice the amount of

the security deposit plus court costs and reasonable attorney fees. [765 ILCS 710/1 (1992)]

Tenant and Landlord Responsibilities

A landlord may *not* insert a provision in a lease which exempts him or her from liability for damages for injuries to persons or property resulting from the landlord's negligence in the operation and maintenance of the building or premises. Said provisions are deemed to be void as against public policy and wholly unenforceable. [765 ILCS 705/1 (1992)]

Written leases generally set forth various tenant obligations, and these, as well as building rules and regulations, must be complied with by the tenants unless they are unreasonable. Tenants should take good care of their apartments and should avoid damaging the building as well.

TORTS

"Torts" is the legal name given to all those areas of law which relate to injury of another person or property. Torts deals with civil injury, not criminal, and the penalty is not jail, but a payment of money to make the injured person whole again.

The main areas of torts are intentional (injury done on purpose) and negligent (injury caused by carelessness). The law of torts is based on an interplay between policies of providing adequate compensation to an injured party (plaintiff) and of punishing a wrongdoer (defendant).

Intentional Torts

Intentional torts include torts to a person and torts to property. Typical examples of torts to a person are assault, battery (defined in "Common Offenses Committed by Juveniles"), false imprisonment (retaining someone although knowing or assuming that person is innocent of wrongdoing), and intentional infliction of emotional distress.

Typical torts to property include trespass to land (going on someone's land without permission); trespass to chattels or property (using someone's property without permission); and conversion of chattels (taking someone's property and having no intention of returning it).

Negligent Torts

A duty is a legal obligation a person has to someone else. In tort law, a person who commits a breach of duty (failure to perform a duty owed to someone) could be held liable for damages.

Under the law of negligent torts, an individual owes other people a "duty of due care", which means that a person must conduct him or herself so as to avoid causing negligent injury to others. People are responsible for injuries resulting from foreseeable consequences following from their actions.

In order to be liable for negligent torts, injury must actually be caused by the act or the failure of someone to act. There must be a showing of actual damage to the person or property.

A person who is responsible for the care of another has the "duty" to aid that person in an emergency. Failing to do so could result in a negligent tort. It should be noted, though, that the general rule in law is that a person has no duty to go to the aid of a stranger in an emergency if that individual did not cause the emergency situation.

However, a "special duty" arises between employer and employee, host and guest, and carrier and passenger.

Other acts of negligence include doing something forbidden by law or otherwise acting carelessly (for example, practicing medicine without a license and injuring the patient), and failing to practice reasonable care when responsible for a third person (for example, a parent or guardian of a minor failing to protect the minor from foreseeable harm).

Liability for Torts

Anyone, including persons under 18 years of age, may sue another person for a tort. In some cases, children over age 7 may be sued for torts. Adults are judged by an objective standard of reasonableness. This means that they are judged according to what a "reasonable person" would do under the same circumstances. Minors between the ages of 7 and 18, however, are judged against a standard of care and behavior that is reasonably expected of other children who are the same age, have the same experience, and have the same intelligence.

Persons injured through negligence may receive money for their pain and suffering, plus any loss of future earnings and medical costs which result from their injury. (For example, if a person is in a serious accident and is permanently injured, that person's ability to work at some later date may be affected. The inability to work may be compensable.) The parents of an injured minor are also entitled to receive the money spent for medical services.

Persons of any age are responsible for all intentional torts they commit. A person who committed a tort unintentionally may still be responsible if he or she is over 7 years of age. [*Jorgensen v. Nudelman*, 45 Ill.App.2d 350, 195 N.E.2d 422 (1st Dist. 1963)] If a judge finds a person responsible for a tort, the person might have to pay cash for the injury caused. Parents may have to pay damages, plus court costs, for a negligent minor child who is unable to pay. [740 ILCS 115/1, *et seq.* (1992)]

A person may be found liable for negligence even if the injured party is partially liable. [*Alvis v. Ribar*, 85 Ill.2d 1, 421 N.E.2d 886 (1981)] The plaintiff's and the defendant's relative fault is compared, and the award of damages to the suing party is reduced in proportion to his or her fault. However, the injured party cannot be more than 50% liable for the injury to collect damages. [735 ILCS 5/2-1116 (1992)] This rule of law is referred to as "comparative negligence".

REGISTRATION FOR THE DRAFT

Registration for the draft was approved by Congress and President Carter in 1980. The draft registration law does not call for resumption of the draft at this time. The law does say that all men must register for the draft when they become 18. Any young man who does not register could be fined up to $10,000, and sentenced to up to five years in prison. [Military Selective Service Act, 50 U.S.C. App. §§ 451 *et seq.* (1988)]

Registration takes place at United States Post Offices throughout the country. Each registrant records his name, address, sex, birth date, social security, phone number, date signed and signature on the registration card.

Conscientious objectors (those opposed to participation in any war on religious, moral, or ethical grounds) may indicate their status on the registration card. The Selective Service will not classify registrants by their physical condition, nor by their student,

marital, or conscientious objector status. A classification system may be added by the Congress at a later date, or when and if the draft is resumed.

Currently, women are not required to register. The Supreme Court has held that the draft is constitutional although it excludes women.

VOTING

All United States citizens 18 and over have the right and responsibility to vote in local, state, and federal elections. It is necessary to register in order to vote. For more information on eligibility and on where and how to register and to vote, contact the local Board of Election Commissioners or Illinois State Board of Elections in Chicago at (312) 814-6440.

SOCIETY'S CONTROLS

INTRODUCTION

The first three parts of this section deal with specific types of crimes. The fourth part describes the legal procedures of arrests and judicial processes.

STATUS OFFENSES

Status offenses apply only to minors. These offenses do not apply to persons over 18. Courts may declare a minor to be "Neglected", "Abused", "Dependent", or a "Minor Requiring Authoritative Intervention."

Some offenses applying only to minors are listed below.

1. **Curfew** prohibits minors from being out alone during certain hours. During these hours, a minor under 17 must be accompanied by a parent, guardian, or other person who is over 18 and has the consent of the minor's parent. Local police will provide information about the curfews in effect in your area. There are exceptions for minors who are working.
2. **Truancy** is the act of staying out of school without "valid cause", including, but not limited to, illness, observance of a religious holiday, death in the immediate family, and family emergency. A chronic truant is a child who is absent from school without permission for 18 or more of the previous 180 regular school days. [105 ILCS 5/26-2a (1994)]
3. **Running away** from home. Minors who run away from home or are found to be beyond their parents' control may be taken into limited custody for up to six hours. If the problem is not resolved within that time, the minor may be transported to an agency or association providing crisis intervention services. If the crisis intervention agency is unable to make arrangements for the child to safely return home, the child can be sheltered in a temporary living arrangement. A petition may be filed with the court alleging that the minor requires authoritative intervention or a neglect petition filed against the minor's parents. [705 ILCS 405/2-1 *et seq.* (1993); 705 ILCS 405/3-1 *et seq.* (1993)]

In some municipalities, police officers can interfere with two or more people gathered together in a public way if they seem suspicious. For more information on status offenses, consult the juvenile officers of your court or county sheriff's office.

COMMON OFFENSES COMMITTED BY JUVENILES

The following are more common offenses committed by young people. Explanations are designed to provide a general idea of what constitutes the illegal act being described.

1. **Assault** involves threatening someone such that the person feels in danger of being hurt. **Battery** is intentionally hurting someone. When a knife or other dangerous weapon is used, the offense is termed **Aggravated Assault** or **Aggravated Battery**. The offense will also be termed "Aggravated" if the person threatened or hurt is a teacher or other school employee, park district employee,

public aid employee, bus driver, correctional officer, or other public employee who is performing his or her job. The offense will also be termed "Aggravated" if the person threatened is over sixty years old, pregnant or physically handicapped. People have the right to protect themselves and others with reasonable force. But they cannot hurt a person just because that person is bothering them. Force may be used only to prevent one person from hurting another.

2. **Vehicular Endangerment** is causing an object to fall from an overpass in the direction of a moving motor vehicle with the intent to strike a motor vehicle.
3. **Domestic Battery** is intentionally causing bodily harm to a family or household member.
4. **Theft** is the taking of or exerting of unauthorized control over someone else's property. This offense includes shoplifting; buying or receiving something with the knowledge or suspicion that it may be stolen; keeping lost property without making a reasonable effort to find the real owner; and using someone's credit card without permission.
5. **Robbery** is taking property from a person, or in front of a person, while using or threatening force. When a dangerous weapon is used, the offense becomes **Armed Robbery**. Also, if the victim is 60 years of age or older, or is handicapped, a more severe penalty is imposed.
6. **Burglary** is entering a building or other personal enclosure (*e.g.*, house, boat), or remaining there without authority and intending to take property or to commit a felony. The law allows more severe penalties for the burglary of a home as compared to a nonresidential burglary. It is also a crime to possess burglary tools.
7. **Auto Theft**, **Criminal Trespass**, or **Possession of a Stolen Vehicle** are the charges used for taking someone's car for a drive without that person's permission, even if the person taking the car intended to return it (for example, joyriding). **Vehicular Hijacking,** *i.e.*, carjacking, is taking the motor vehicle of another by force or threat of force.
8. **Mob Action** is two or more persons disturbing the peace, using violence or otherwise disobeying the law.
9. **Criminal Fortification of a Residence or Building** is the use of steel, wood, dogs, alarm systems or other means to impede the entry of police into a residence or building by a person involved in drug trafficking.
10. **Disorderly Conduct** includes making phony or obscene phone calls; pulling a fire alarm knowing that there is no fire or emergency; making a false bomb threat; and making a fake police report, as well as other generally disruptive behavior.
11. **Vandalism** or **Criminal Damage to Property** is willful and malicious destruction or defacement of public or private property.
12. **Intimidation** is threatening to hurt someone (either the person directly or another person he or she knows) in order to force that person to do something (for example, forcing someone to join a gang). **Ethnic Intimidation** or **Hate Crime** is committing offenses such as assault, trespass or mob action by reason of another person's race, color, creed, religion or national origin.
13. **Hazing** is any pastime or amusement engaged in by students or others in schools in which persons are ridiculed for the pastime of others.
14. **Compelling Organization Membership of Persons** involves compelling others to join an organization or association, *i.e.*, gang, by bodily harm or threat of

bodily harm to that person or to that person's family. The penalty is increased when the offender is 18 years old or older and the victim is younger than 18 years old.

15. **Educational Intimidation** is interfering with the right of any child who has a chronic or infectious disease from attending or participating in school activities.
16. A person commits the offense of **Stalking** when he or she twice follows another and threatens him or her. The penalty is increased when the offender hurts or restrains the victim.
17. **Trespass** is entering someone's land without permission.
18. **Criminal Sexual Abuse** is any sexual act, including touching or fondling, by the use of force or the threat of force. An offense also occurs when a person has sexual intercourse with someone who is under 17. If the accused is more than five years older than the victim, the charge is **Aggravated Criminal Sexual Abuse**. Any act of sexual intercourse between a person 17 or older with someone under 13 constitutes the even more serious charge **Criminal Sexual Assault**.
19. A person commits **Criminal Transmission of HIV** who knows he or she is HIV positive and has intimate contact or shares needles with another.
20. A person **Resists Arrest** when he or she resists or obstructs a police officer in the course of his or her duty.

TERMS OF POSSESSION: GUNS, ALCOHOL, TOBACCO AND CANNABIS

The following is a description of the requirements and penalties for possessing and/or selling a number of potentially dangerous items. Explanations are designed to provide a clear description of what juveniles may or may not purchase.

Guns

A Firearm Owner's I.D. card is necessary to possess a gun and/or ammunition. To get this card, a person must be over 21, never have been declared a delinquent, never been convicted of a felony and not have been in a penitentiary or mental hospital within the last five years.

An I.D. card may be obtained by someone under 21 with written parental consent. However, the consenting parent(s) must also be eligible to receive a card. Someone under 18 who has a Firearm Owner's I.D. card may not have a gun which can be hidden under clothing. [430 ILCS 65/4 (West 1993)] Any other possession of a gun, with a few exceptions, is illegal.

A salesperson may not sell a B-B gun to anyone under 13. [720 ILCS 535/2 (West 1993)] A person between the ages of 13 and 21 may shoot a B-B gun only on a safely constructed target range, or if the person is a duly enrolled member of a club or team and is shooting under adult supervision. [720 ILCS 535/4 (West 1993)]

Many local communities have gun control ordinances which are enforced within their boundaries. Consult your local police department or county sheriff's office for the laws which apply in your community.

Alcohol

In order to buy, drink, or possess any alcoholic beverages in Illinois, a person must be 21 or over. This includes beer, wine, and hard liquor. [235 ILCS 5/6-16 (West 1993)] No one, regardless of age, may drink or possess any open bottles or cans of alcohol on the street, beaches, or in a car while moving. The penalties for driving while intoxicated are more severe for those offenders under eighteen years old and the alcohol level which constitutes intoxication is much lower for young offenders.

Tobacco

Tobacco or cigarettes cannot be sold or given to anyone under 18. All manufacturers must label cigarettes as potentially harmful to your health.

Cannabis

Cannabis, as defined in the Illinois Cannabis Control Act, includes marijuana, hashish, resin, including tetrahydrocannabinol (THC) seeds, and all other derivatives of the cannabis plant. The possession or sale of cannabis is illegal in Illinois.

The penalties for selling and possessing cannabis are based on the quantities involved -- the larger the quantity, the stiffer the possible penalty. Usually, sale of cannabis carries a stiffer jail sentence and fine than does possession.

These penalties can vary under certain sections of the Act. Under the enhanced penalty section, a person may be subject to a penalty twice the normal maximum term. This could happen if someone 18 or older attempts to, or succeeds in transferring (giving or selling) an amount of cannabis to a person who is under 18 and is three years younger. (For example, if you are 19 and attempt to, or actually do give or sell cannabis to a person 16 or younger, you could be given twice the normal sentence for that offense.) In addition, the maximum penalty for a sale occurring within 1000 feet of a school is fifteen years and a $200,000 fine. [720 ILCS 550/5.2 (West 1993)]

A person who transfers an amount of cannabis without receiving anything in return for it could be sentenced under the casual delivery section of the act. The penalty for this offense is the same as the penalty for possession. The quantity of cannabis transferred determines the sentence.

One of the most important aspects of Illinois' cannabis law deals with first offenders. A first offender is a person who has not previously been convicted or placed on probation for any offense under the Cannabis Control Act, or any law of the U.S. or any other state relating to cannabis or controlled substances. A first offender who pleads guilty of certain violations of the act can be fined and sentenced to a special form of probation by the Court. If the terms of the probation are fulfilled, the Court will dismiss the charge and discharge the offender from probation, thus avoiding a criminal record. This form of discharge and dismissal can occur only once during an individual's lifetime.

It should be noted that a person involved in the growing or processing of cannabis can receive a stiff fine and/or jail sentence. [720 ILCS 550/8 (1993) For example, a person convicted of growing over 50 plants may be sentenced for up to seven years in jail and fined up to $100,000.

Other Drugs

The Cannabis Control Act covers only marijuana and the other cannabis derivatives. Other drugs which are considered dangerous to take without the advice of a doctor are controlled by the Illinois Controlled Substances Act. [720 ILCS 102 *et seq.* (1993)] Penalties for use of these drugs are based on their potential for abuse, and their degree

of psychological or physiological dependence. Under this act, it is illegal to manufacture, sell or give these substances away; possess them without a prescription; or try to get them by changing a prescription.

Drugs classified as narcotics, including heroin and cocaine, are controlled under both State and Federal laws. Penalties are based on quantity, degree of potential harm, and are stricter for manufacture and delivery than they are for possession.

LAW ENFORCEMENT

Arrests

Arrests may be made when a court has issued a warrant for the arrest of a specific person, or when a law enforcement officer has good reason to believe that a suspect has broken a city, state, or federal law. One should not run away, resist arrest, or argue with a police officer.

The Supreme Court has outlined certain rights that everyone has when arrested for custodial interrogation (questioning by the police while in custody). These rights include:

1. the right to remain silent whether or not a lawyer is present;
2. the right to be told that anything said by the suspect may be used against him or her in a court of law;
3. the right to have a lawyer present during any questioning;
4. the right to be informed that the court will appoint a lawyer free of charge for any suspect who cannot afford one; and
5. the right to be informed that if he or she chooses to answer questions, he or she can stop the questioning at any time. [*Miranda v. Arizona*, 384 U.S. 436 (1966)]

The police may place a suspect in a line-up for possible identification by witnesses, but there are certain guidelines. The suspect must resemble others in the line-up. For example, the suspect cannot be the only person in the line-up who has long hair, the only member of a minority group, or the only person of his or her sex. [*U.S. v. Wade*, 388 U.S. 218 (1967)] A person charged with a crime has a right to have a lawyer present when in a line-up. [*People v. Palmer*, 41 Ill.2d 571, 244 N.E.2d 173 (1969)]

Searches

Generally, a law officer must appear before a judge in order to get a search warrant before actually executing the search. Some exceptions to this are listed below.

1. **Arrest** — When an arrest is being made, the police may search the person being arrested and the area within the officer's range to ensure protection from close range weapons. (This applies regardless of whether the officer has a warrant.) If the police are making an arrest of a driver of a car, the officer may also search glove compartments, trunks, handbags, and other areas where a weapon may be stored.
2. **Plain View** — Any officer who comes across illegal material does not need a search warrant to seize that material, as long as the officer has a legal right to be at the location where the material is found. (For example, if a police officer stops a car because it has a faulty brake light, and upon stopping the car the officer sees marijuana on the dashboard, the officer may seize the marijuana and arrest the driver. The marijuana may be used as evidence against the driver.)

3. **Consent** — When someone having a legal right to consent to a search does so, a police officer may execute a search without a warrant.
4. **Hot Pursuit** — When the police are in hot pursuit or chasing a suspect, they may search without a warrant. (For example, if the police chase a robbery suspect from the scene of a crime to a house, the police may follow the suspect and search the house for the suspect.)
5. **Stop and Frisk** — The police may stop persons who they reasonably believe are committing, have committed, or are about to commit a crime. When such stops are made, persons reasonably believed to be armed may be frisked, but ONLY for dangerous weapons.
6. **Customs** — Customs officers may search anyone passing through customs (at a border or airport) for illegal materials and items on which duty should be paid.
7. **Airports** — Passengers and others passing through departure gates are subject to search for weapons and other articles which may not be carried onto airplanes. In some instances, luggage or packages may be retained for a short period of time while warrants are being sought.
8. **Good Faith** — Evidence obtained in a search based upon an invalid search warrant may be used against a suspect, if the police officer acted in good faith. This good faith exception has also been extended to searches based upon illegal statutes and searches of the wrong apartment. For example, if the police get a warrant to search your neighbor's apartment and mistakenly search your apartment, any drugs they find in your apartment can be used against you, as long as the police acted in good faith. [*Maryland v. Garrison*, 480 U.S. 79 (1987)]; *U.S. v. Leon*, 468 U.S. 897 (1984)]
9. **Inventory** — When the police take custody of a vehicle after a traffic arrest, they can take an "inventory" of the contents of a car without a warrant. For example, if you are arrested for drunk driving and the police tow your car, they can search the entire car, including closed containers, without a warrant. [*Colorado v. Bertine*, 479 U.S. 367 (1987)]
10. **Probation** — The police can search the home of someone on probation without a warrant. [*Griffin v. Wisconsin*, 483 U.S. 868 (1987)]

The police cannot pump a person's stomach for evidence [*Rochin v. California*, 342 U.S. 165 (1952)] but they can take a blood sample. [*Schmerber v. California*, 384 U.S. 757 (1966)] Breathalyzer tests may also be administered when a person is suspected of driving under the influence of alcohol.

THE JUVENILE COURT PROCESS

Children taken to juvenile court fall into one of the four statutory categories.

A **Delinquent Minor** is a person younger than 17 who has broken or has attempted to break a federal or state law or a municipal ordinance. [705 ILCS 405/5-3 (1992)]

A **Minor Requiring Authoritative Intervention** is a person younger than 18 who is absent from home without the consent of a parent or guardian, *or* who is beyond the control of a parent or guardian in circumstances which constitute a substantial and immediate danger to the minor's physical safety; *and*, after interim counseling, will not agree to return home or to being placed in an alternative residence. [705 ILCS 405/3-3 (1992)]

Abused, Neglected, and Dependent Minors are discussed in the section entitled "Parental Rights and Responsibilities."

An **Addicted Minor** is a person younger than 21 who is addicted to drugs or alcohol as defined in the Illinois Alcoholism and Other Drug Dependency Act. [705 ILCS 405/4-3 (1992)]

All juveniles taken to police stations are referred to a special police officer who deals with juveniles. The youth officer then takes one of the following actions:

1. releases the juvenile;
2. makes a station adjustment. Station adjustments are usually made when the offense is minor, the offender has no past record, and the parents are cooperative. The youth officer may encourage the youth and the parents to seek counseling [705 ILCS 405/5-6(3),(4) (1992)]; or
3. sends the young person to juvenile court. This is done when the youth officer believes the act(s) were too serious to dismiss. The youth officer will decide whether the juvenile may go home or be detained until the court date. Young people who are detained are taken to facilities especially for juveniles. At no time may the juvenile be jailed with adults. No minor shall be detained in a county jail or municipal lock-up for more than six hours. [705 ILCS 405/5-7(2)(C) (1992)]

Detention Hearing

Youths charged with delinquency who are detained by a youth officer are entitled to a temporary detention hearing within 36 hours. [705 ILCS 405/5-9(1) (1992)] A juvenile who is awaiting an adjudicatory hearing while at home does not have a detention hearing, but will have initial contact with a judge on the first day in court.

At the temporary detention hearing, the judge determines whether the state has probable cause to believe that a delinquent act was committed, and that the youth in custody committed it. No hearing may be held unless the minor is represented by counsel. [705 ILCS 5/5-10 (1992)] A judge may determine that a juvenile should be held in custody. The judge could base this decision on the desire to protect the minor, to safeguard others, or to insure the juvenile's presence in court.

If the juvenile pleads not delinquent (not guilty), the judge will determine if there is sufficient reason to believe the petition (the written notice claiming that the juvenile committed a crime or is in need of supervision) is true. [705 ILCS 405/5-10 (1992)] Usually the prosecutor must show only a small amount of evidence to show probable cause to detain the juvenile until the adjudicatory hearing. If the juvenile pleads delinquent at the detention hearing, the case will proceed to a dispositional hearing, not an adjudicatory hearing.

Screening Process

Those juveniles who have been sent to court but not detained by a youth officer are referred to a juvenile court. Before going to court, a probation officer reviews the case and talks with the juvenile and family to find out whether further involvement with the juvenile court is necessary. At the same time, the state's attorney reviews the case and decides whether or not to prosecute. If the state's attorney decides against prosecution, the probation officer may inform the juvenile that there will be no court involvement, but may refer the minor to a community resource.

If the state's attorney decides to take the case to court, the juvenile is scheduled to appear in court and may proceed to an adjudicatory hearing.

The Adjudicatory Hearing (Trial)

The purpose of this hearing is to decide whether or not the charges brought by the state are true. The juvenile pleads either delinquent or not delinquent. Juveniles held in custody must have an adjudicatory hearing within 10 court days after the order requiring detention. The statute contains certain exceptions that bring the maximum detention time to 30 days. [705 ILCS 405/5-14(b)(2) (1992)] Juveniles not detained must have an adjudicatory hearing within 120 days of either party demanding such a hearing. [705 ILCS 405/5-14(b)(1)(A) (1992)] A failure to hold the hearing within 120 days of a demand may lead to a dismissal of the petition. [705 ILCS 405/5-14(b)(1)(C) (1992)]

Before the adjudicatory hearing, attorneys for the juvenile and prosecution may engage in "plea bargaining"; that is, the lawyer representing a juvenile might try to work out a deal with the state's attorney. In this case, the state's attorney may drop or reduce some of the charges and agree to a lighter sentence, perhaps probation. Plea bargaining has the effect of reducing the number of adjudicatory hearings. Plea bargaining can work either for or against a juvenile.

A juvenile who rejects a bargained plea and is found delinquent could receive a harsher sentence than previously offered in negotiations. However, a person who is truly innocent should not plead guilty to a charge. Guilty pleas are changed only when a person shows that the earlier plea was made involuntarily.

A young person in juvenile court has most of the same rights as an adult. The following are exceptions:

1. A juvenile does not have the right to a trial by jury. [*McKeiver v. Pennsylvania*, 403 U.S. 528 (1971)] A judge will determine whether or not a juvenile is delinquent. The Illinois Supreme Court has decided that delinquents will have no right to a trial by jury unless the state legislature passes such a right into law. [*People Ex Rel. Carey v. White*, 65 Ill.2d 193, 357 N.E.2d 512 (1976)]

   An exception to this occurs when a juvenile is tried as a habitual juvenile offender (HJO). See the section on Habitual Juvenile Offender, below.

2. Juvenile court hearings are closed to the general public; however, the news media and other interested parties may attend. [705 ILCS 405/1-5(6) (1992)]

At the adjudicatory hearing, evidence is presented and witnesses are questioned and cross examined. [*In re Gault*, 387 U.S. 1 (1967)] A juvenile who is charged with being delinquent must be proved guilty beyond a reasonable doubt. [705 ILCS 405/5-18 (1992)] If the juvenile is found not delinquent, the case will be dismissed. [705 ILCS 405/5-20 (1992)] Court supervision is a continuance of the case during which the court tries to determine whether the young person is responsible enough to meet the conditions of supervision. If the juvenile does not complete supervision satisfactorily, the judge can change a "no finding" to a finding of delinquency.

If the juvenile is found delinquent, the court has several alternatives before the juvenile is sentenced, including the options noted below.

1. A probation officer or the Illinois Department of Children and Family Services may be ordered to make a social investigation of the juvenile's life. The officer will go to the juvenile's neighborhood and home and discuss the case with the juvenile's parents, teachers, school officials, and any other agencies which might have been working with the family. This is done in delinquency cases to determine what course of action is best for the child. [705 ILCS 405/5-21 (1992)]
2. The judge may order the juvenile to remain in custody until the dispositional hearing (sentencing). If the judge orders this, the dispositional hearing must take place within a maximum of 30 days or the juvenile must be released. [705 ILCS 5/5-22(3) (1992)]
3. The judge may order the juvenile out of custody until sentencing. In this case the dispositional hearing usually takes place within six weeks.
4. The judge may order the juvenile to undergo psychological or psychiatric testing while awaiting sentencing. A juvenile who was not held in custody before the trial and who is found delinquent will probably be allowed to go home if a parent or guardian guarantees that the juvenile will appear for the dispositional hearing.

The Dispositional Hearing (Sentencing)

At this hearing, the probation officer will present to the judge a report of what was found during the social investigation and may recommend a specific action. The lawyer for the minor and the state's attorney will also have a chance to give recommendations. The judge will make the final decision, based upon the best interest of the juvenile, the best interest or requirements of the community, the seriousness of the offense, the juvenile's past record and character, and the ability of the juvenile's parents to care for, train, and discipline the juvenile. [705 ILCS 405/5-22 (1992)]

A juvenile found Delinquent may be sentenced as set forth below.

1. Probation or conditional discharge (a non-reporting form of probation), and released to his/her parents or guardians. A juvenile who violates probation will be brought to court by the probation officer or the police. The same judge who originally placed the juvenile on probation will decide whether the juvenile should get another chance on probation, or should be sent to the Department of Corrections if the juvenile is at least 13 years old.
2. Commitment to a relative, guardian, or other person, the Department of Children and Family Services (DCFS), or other appropriate institution. The judge may order this when the minor's parents or legal guardian are found unfit or unable to protect, train, or discipline the minor. [705 ILCS 405/5-29 (1992)]
3. Treatment for drug addiction. The judge may order the juvenile to receive treatment under the Department of Mental Health and Developmental Disabilities. [705 ILCS 405/5-23(a)(3),(b)(1.1) (1992)]
4. Time in the temporary detention shelter (Youth Home) for juveniles. A minor may not be held for more than 30 days.
5. Partial or complete emancipation in accordance with the provisions of the Emancipation of Mature Minors Act [705 ILCS 405/5-23(a)(6) (1992)] This sentence is rarely given. (See the section "Breaking the Family Bonds" for a description of an emancipated minor.)

6. The Department of Corrections (DOC), Juvenile Division. A juvenile 13 years of age or older may be committed to the Juvenile Division of the Illinois DOC. This is the most severe placement a juvenile judge can make and is only used in extreme cases. DOC has several youth centers serving juveniles. In addition, DOC through the Juvenile Field Services offers various community-based alternatives to institutionalization. [705 ILCS 405/5-23(b) (1992)] A juvenile committed to DOC shall be given an indeterminate term which will terminate when the minor reaches the age of 21 or has been discharged prior to his twenty-first birthday. [705 ILCS 405/5-33(2) (1992)]

A finding of a Minor Requiring Authoritative Intervention will lead to the issuance of one of the dispositional orders as set forth below.

1. Commitment to the Department of Children and Family Services, which offers a wide range of services. A juvenile may be placed in a foster home, a residential school, a group home, or with a relative or friend. Before the court may do this, however, the state must show that the parents are unable to provide proper care. Juveniles placed in foster homes which they do not like should first talk to their caseworker. If the situation does not improve, the Guardian Ad Litem at juvenile court (the court-appointed adult who acts as the child's temporary guardian) should be called.
2. Placement under supervision and release to parent(s), guardian, or legal custodian.
3. Placement in a guardianship or custodianship of a relative or interested person with or without supervision.
4. Rather than sentencing the minor, the Court may partially or completely emancipate the minor in accordance with the provisions in the Emancipation of Mature Minors Act. [750 ILCS 30/1, *et seq.* (1992)]
5. Following any adjudication of delinquency for a crime which would be a felony if committed by an adult, the state's attorney shall provide a copy of the dispositional order to the principal of the school where the minor is enrolled. Access to such juvenile records shall be limited to the principal or chief administrative officer of the school and any guidance counselor designated by him/her. [705 ILCS 1-8(F)]

"5-4" (Transfer) Hearing

If a juvenile 13 or older is accused of a serious crime and/or has a long record, the prosecuting attorney may ask the juvenile court to transfer the case to the criminal court at any time before the adjudicatory hearing. [705 ILCS 405/5-4(3) (1992)] If granted, the juvenile is transferred to the criminal court and is treated exactly like an adult.

Individuals 15 or 16 years old who are accused of certain sex crimes, murder, or armed robbery with a firearm are automatically transferred to the adult criminal court. [705 ILCS 405/5-4(6)(a) (1992)] This is a mandatory provision of the Juvenile Court Act; judges do not have discretion in this area.

During the 1993-94 legislative sessions, many other criminal acts were added to the list leading to automatic transfer, as well as proposals to lower the age on mandatory transfers for certain crimes. At the time of publication, many of those bills had not been signed into law by Governor Edgar. Contact your Illinois Senator or Representative for the latest information.

A conviction in criminal court allows fewer sentencing alternatives and perhaps a longer jail sentence. Under the juvenile system, a minor must be released at the age of 21. Under the criminal system, no such age limitation exists. (See description of the Criminal Court.)

Habitual Juvenile Offender

A habitual juvenile offender (HJO) is a juvenile delinquent who has been, on two occasions, adjudicated delinquent for offenses which would be treated as felonies as an adult, and who has been adjudicated delinquent for a third time. The second offense must have occurred after a finding was made on the first offense, and the third offense must have occurred after a finding was made on the second offense. The third offense must be for certain serious crimes. [705 ILCS 405/5-35(a) (1992)]

A juvenile tried as a HJO is entitled to a jury trial, unless he or she demands a trial before the court. [705 ILCS 405/5-35(d) (1992)] If found guilty, there are no sentencing options -- the court must sentence the juvenile to the DOC until his or her twenty-first birthday. Good-time credit can be given for up to half of the sentence. For each day of good behavior, one day may be taken off the sentence, but good-time behavior will be eliminated if the juvenile gets into any trouble. [705 ILCS 405/5-35(f) (1992)]

Parole

Based on a delinquent's behavior and rehabilitation, he or she shall be eligible for parole, except those juveniles tried as HJO. [730 ILCS 5/3-3-3(e) (1992)] Sometimes parole may be determined by point systems. The very latest that a juvenile may be paroled is on his or her twentieth birthday. [730 ILCS 5/3-3-5(d) (1992)]

Because the juvenile court has no authority over a person after the twenty-first birthday, the parole period may not last past that time. A person who is in custody as a juvenile must be released at that time.

Appeals

All decisions made during or after the trial may be appealed to a higher court. Appeals may be granted when a serious mistake or a very bad decision was made. As a practical matter, a juvenile's "sentence" will often be completed before any appeal can be completed.

The Consequences of a Juvenile Record

An adult convicted of a crime will have a record throughout life. A juvenile record, on the other hand, may be expunged (erased).

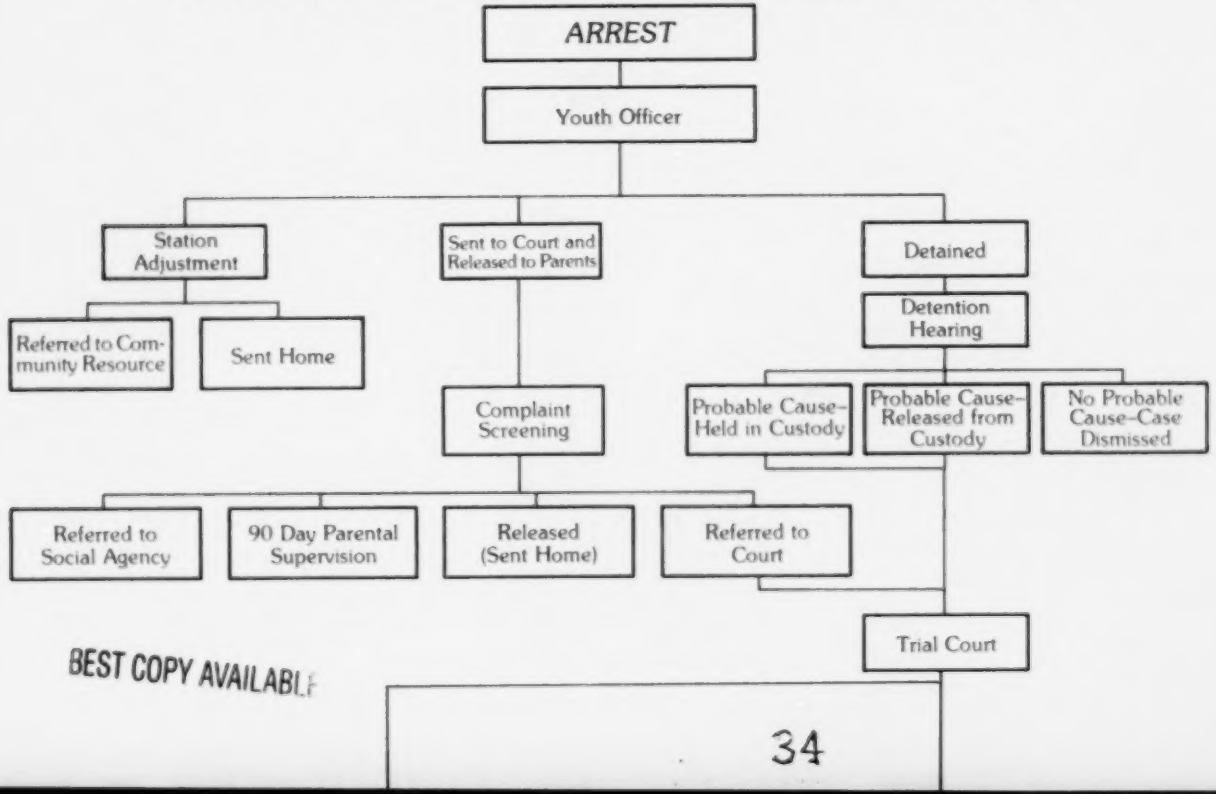
Expungement is *not* automatic. Persons wishing to have records expunged should contact the state's attorney's office at juvenile court to determine their eligibility. Only a judge can grant the request. The judge will consider the juvenile's past record. [705 ILCS 405/1-9 (1992)]

Once the records are expunged, the court orders the police department to destroy them and the court to seal them. After this occurs, there should be nothing left on file to indicate the person was once declared delinquent.

Differences Between Criminal and Juvenile Court

Anyone 17 or older who is charged with a crime goes to criminal court. The major differences between cases handled in juvenile court and cases handled in the adult court are:

JUVENILE JUSTICE SYSTEM (FOR DELINQUENT ACTS)



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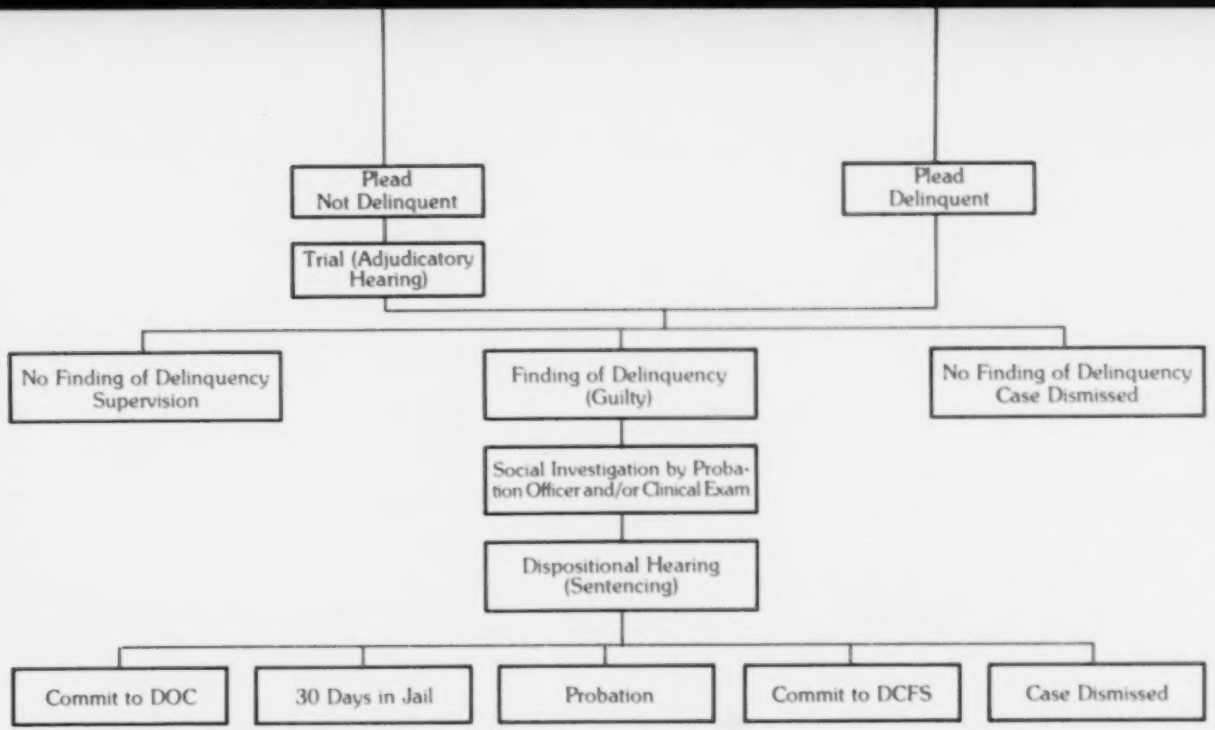

Note: This diagram should be used as an aid to understanding the procedures described in the following pages. The transfer hearing seeking to transfer a juvenile case to adult court which can be held at any time before the adjudicatory hearing and the habitual juvenile offender procedures are not incorporated into the diagram. Although this diagram shows the most common routes in the juvenile justice system for delinquency proceedings, there are other alternative routes possible.

1. An adult is entitled to a jury trial -- juveniles are entitled to a jury trial only in criminal court or if they are being prosecuted as HJOs.
2. An adult may be prosecuted for a felony only by information (state's attorney files the charge) or indictment by a grand jury -- a juvenile is not entitled to indictment or information. Any adult person, agency, association, or juvenile court may seek through the state's attorney to file a petition charging a minor with a delinquent act. (Usually, a youth officer sends the juvenile to court.)
3. Adult proceedings and records are open to the public -- juvenile proceedings are not.
4. An adult is entitled to reasonable bond in most cases -- a juvenile is not entitled to bond before a adjudicatory hearing. A person 17 or older who has been arrested, or a juvenile who is going to the adult court pursuant to the state's attorney's 5-4 motion (a request for a transfer hearing), is entitled to a reasonable bond upon arrest. This is usually set at a bond hearing but can also be determined at the police station. Anyone who cannot make bond must be tried within 120 days. Anyone released on bail or on recognizance (without bail but with a promise to return and face charges) must be tried within 160 days.
5. An adult is sentenced for a certain number of years -- a juvenile is committed to the Department of Corrections for an indeterminate amount of time, but must be released on or before his twenty-first birthday.
6. An adult can be found guilty of committing a crime -- a juvenile tried in juvenile court is never found guilty of committing a crime, but can only be found delinquent.

Criminal Court Sentencing Alternatives

These penalties apply only to defendants who are tried and convicted in Criminal Court. There are two general categories:

1. Misdemeanors are less serious crimes such as criminal trespass to a vehicle, battery, simple assault, disorderly conduct, unlawful possession of firearms, and pranks or obscene telephone calls. The penalty for misdemeanors can be up to one year in prison and/or up to a $1,000 fine.
2. Felonies are more serious crimes such as armed robbery, robbery, murder, kidnapping, and false fire alarms. The penalty for felonies can be anywhere from one year on up to natural life and/or a fine of up to $100,000. The death penalty may also be given for murders under certain circumstances.

Contact the Illinois Department of Corrections for a complete list of institutions housing criminals and delinquents and an explanation of the services available. Write or call the Public Information Officer, 1301 Concordia Court, Springfield, Illinois 62794, (217) 522-2666.

The Consequences of a Criminal Record

A person convicted of a crime in the criminal court may be ineligible for certain kinds of employment, denied a driver's license, denied admission to certain colleges or universities, denied bonding (a requirement for some jobs), or be ineligible to vote. In addition, a convicted person may not be eligible to join the armed forces or, if accepted, may not be eligible to receive a commission.

Each school district must develop policy guideline procedures to establish and maintain a reciprocal reporting system between the school district and local law enforcement agencies regarding criminal offenses committed by students. [105 ILCS 5/10-20.14]

CRIME VICTIMS' COMPENSATION ACT

In many cases, one who is injured as the result of a violent crime or a driver who is drunk or on drugs is entitled to receive compensation of up to $25,000 from the State for injuries actually sustained. In addition, the dependents or relatives of victims may be entitled to compensation for lost financial support, medical or funeral expenses or other financial losses they incur.

There are several criteria which an applicant for compensation must meet. Law enforcement officials must have been notified within 72 hours of the crime or injuries. The applicant must have cooperated fully with law enforcement officials and must not have been the substantial cause of the injuries. The applicant must file an application form with the Illinois Court of Claims within one year, or in some cases up to two years, after the incident. Neither the criminal offender nor his accomplice is entitled to compensation under the Act. [740 ILCS 45/1 (1994)]

If you believe that you may be entitled to compensation under the Crime Victims Compensation Act, or if you would like more information, you should contact the Illinois Attorney General's Office, Crime Victims' Division, 13th Floor, 100 West Randolph Street, Chicago, Illinois 60601, (312) 814-2581.

CIVIL COMMITMENT TO A MENTAL INSTITUTION

Admissions

Persons 16 or older may admit themselves to a mental hospital. The parents or guardians, however, will be informed of the admission. [405 ILCS 5/3-502 (1994)] Parents, guardians, and persons acting in the place of parents may also admit a minor to a mental hospital.

The "standard of dangerousness" required to commit an adult to an institution is not required for a minor. Parents or guardians need only state the reasons they believe the minor has a severe emotional disturbance requiring hospitalization, and why the minor is likely to benefit from inpatient treatment. A patient must be examined by a psychiatrist or psychologist, who must state in writing his or her conclusions and the reason for them, and that alternatives to hospitalization (counseling, outpatient treatment) have been explored. [405 ILCS 5/3-503 (1994)]

The Department of Children and Family Services (DCFS) and the Department of Corrections (DOC) may admit their wards under the standard set above.

If immediate hospitalization is necessary, and the patient's parent(s) or guardian cannot be located, or they refuse to consent to admission, another adult (18 or older) may admit the patient. However, the parent(s) or guardian must be notified. If no parent or guardian can be located within three working days, a petition will be filed under the Juvenile Court Act to have a guardian appointed for the patient. [405 ILCS 5/3-504 (1994)]

A police officer may transport a minor to a mental hospital if there are reasonable grounds to believe that the minor meets the standard for admission, and that hospitalization is necessary to protect the minor or others from physical harm. The officer

must complete a detailed statement of the reasons for immediate hospitalization including the date, time and place of the acts or the threats the minor has made. [405 ILCS 5/3-504 (1994)]

When a person other than a minor's parent or guardian (a police officer, or an adult 18 years or older) admits a minor to a hospital, a psychiatrist or psychologist must examine the patient within 24 hours and state in writing that the patient meets the standard for admission. If this is not done, the hospital must discharge the patient. [405 ILCS 5/3-504 (1994)]

Persons 12 years of age or older must be told of the right to object to being admitted to a mental institution. The patient, or the parent or guardian, or an interested person 18 years or older can object for the patient. The hospital must then discharge the patient within five working days unless it petitions the court with two certificates for commitment. The petitions must state that the patient has a severe mental illness or emotional disturbance that requires hospitalization from which the patient is likely to benefit and that a less restrictive alternative is not appropriate. [405 ILCS 5/3-507 (1994)] If the court determines that the patient does not meet the standard of admission, the patient will be discharged by the court.

A person 12 years of age or older must be given a copy of the admission application. Copies must also be given to the person who made the application for admission, the patient's parent or guardian, an attorney, and two other persons chosen by the patient. [405 ILCS 5/3-505 (1994)]

Thirty days after admission, the person who made the application for admission must give notification that hospitalization is still needed. Every 60 days thereafter, this procedure must be repeated. If it is not, the hospital must discharge the patient. [405 ILCS 5/3-506 (1994)]

Rights in a Mental Institution

A patient retains all the rights guaranteed under the Illinois and United States Constitutions and under other laws. [405 ILCS 5/2-100 (1994)] A patient has the following rights.

1. **Access to an advocate or lawyer.** If a patient does not have, and cannot afford a lawyer, the court will appoint one free of charge. A patient should tell the lawyer of any witnesses or information that might demonstrate why hospitalization is not necessary. The lawyer should also be told of other agencies that might be of help (such as a drug treatment program or a youth services bureau) and/or of any future plans (such as a job or vocational training). Patients should direct questions about their rights to a lawyer or a patient advocate. [405 ILCS 5/3-805 (1994)]
2. **Private, unimpeded and uncensored communication by mail, telephone and visitation.** These rights can be restricted only to prevent a patient from harm, harassment or intimidation and only if notification of these restrictions was given during admission. Patients without money for telephone calls must be given reasonable telephone funds. [405 ILCS 5/2-103 (1994)]
3. **Treatment outside the hospital and an individual treatment plan formulated with the patient's participation and review.** Treatment must take place in the least restrictive environment, which includes treatment in a community program outside the hospital if there is one to meet the patient's individual needs (for

example, a drug treatment program or a youth services bureau). [405 ILCS 5/2-102 (1994)]

4. **Freedom from restraints and seclusion.** Physical restraints and seclusion can be used only to prevent the patient from causing physical personal harm. They cannot be used as punishment or discipline nor as a convenience for staff. If a patient is restrained or secluded, or restricted from using the phone and seeing visitors, then the parents or guardian, and anyone else the patient wants informed, must be formally notified. The notice must state why this action was taken. [405 ILCS 5/2-108, 2-109 (1994)]
5. **Access to personal records.** Patients 12 or older have the right to inspect and receive copies of personal records upon request, and sign for someone else to receive copies of them. Parents or guardians of patients under 12 have the right to receive the records. If patients over 12 and under 18 object to their parents seeing the records, the parents may petition the court to see the records. A patient who disagrees with any part of the records has the right to enclose a statement in the records disputing the information. This statement must be included in the record whenever it is released to anyone. [405 ILCS 5/804 (1994)]
6. **Discharge.** Any person admitted to an institution for mental illness may file a petition for discharge at any time in the local county court and a hearing shall be held within 5 days. [405 ILCS 5/3-901 (1994)]

ALIENS

U.S. Citizenship

A person born in the United States is a citizen of the United States. [8 U.S.C.A. § 1401(a)] Generally, all persons born in Puerto Rico are United States citizens. [8 U.S.C.A. § 1402] In certain cases, a person born outside the United States may be a United States citizen if one or both of his or her parents are United States citizens. [8 U.S.C.A. §§ 1401(c)(d) and (g)] Minors born outside the United States who have been admitted for lawful permanent residence in the United States may become United States citizens if:

1. they live in the United States with a parent or guardian who becomes a citizen before the child reaches 18 [8 U.S.C.A. §§ 1431, 1432(a)(4) and (5)]; or
2. they are adopted by a United States citizen before age 18. [8 U.S.C.A. § 1433(b)]

Parents who are not United States citizens can help their child become a citizen by filing a petition with the Attorney General before the child's eighteenth birthday. Minors must have legally lived in the United States for a certain length of time before filing the petition. Persons 18 or older may become citizens by filing an application with the Immigration and Naturalization Service of the United States Department of Justice.

Citizenship might be denied to a person for the following reasons:

1. the person advocates, teaches or is a member of an organization opposed to all organized governments [8 U.S.C.A. § 1424(1)];
2. the person advocates, teaches or is a member of an organization which advocates or teaches the violent overthrow of the United States government (possibly the Communist Party) [8 U.S.C.A. § 1424(a)(4)];

3. the person deserts the United States armed forces or illegally avoids the draft [8 U.S.C.A. § 1425]; or
4. the person avoids serving in the United States armed forces by claiming to be an alien. An alien may be permanently ineligible for citizenship if he does not register. [8 U.S.C.A. § 1426]

Lawful Permanent Residence

An alien is a person who is not a citizen of the United States. [8 U.S.C. § 1101(a)(3)] Generally, aliens can get a visa to reside permanently in the United States if they have close family relatives (parents, spouse, children, or brothers or sisters) who are United States citizens or lawful permanent residents of the United States

In certain cases, a minor may be able to get permanent residence by accompanying relatives who qualify under either of the above qualifications. [8 U.S.C.A. §§ 1151, *et seq.*]

An alien shall be ineligible to receive a visa and shall be excluded from admission to the United States if he or she:

1. is mentally retarded or insane. [8 U.S.C.A. §§ 1182(a)(1)-(2)];
2. is afflicted with any dangerous or contagious disease [8 U.S.C.A. § 1182(a)(6)]; or
3. is, in the opinion of the Attorney General, likely to become a public charge. [8 U.S.C.A. § 1182(a)(15)]

Generally, aliens have the same rights as citizens of the United States. Aliens, however, cannot vote, run for elective offices, work for the federal government, or work in specified occupations such as police officers, firemen and sometimes teachers. (An employer may give a job to a citizen before an alien, because of citizenship and not because of race, color, religion, or national origin.)

Legal aliens have the same obligations that citizens have, including paying income and social security taxes, and abiding by all the laws of this country. In addition, an alien 14 or older who stays in the United States for more than 30 days is required to report an address of residence in January of every year by filing an alien registration card with the Immigration Service. An alien must also notify the Attorney General in writing of each change of address and a new address within 10 days from the date of the change. This card can be obtained at the U.S. post office. The parents of an alien not yet 14 are obligated to file alien registration cards for their children. [8 U.S.C. §§ 1302, 1305]

Deportation

A legal alien can be deported. For example, aliens who are lawful permanent residents of the United States may be deported if they are convicted of certain crimes such as being involved with marijuana or other narcotic drugs. [8 U.S.C.A. §§ 1251(a)(4),(5), (11)]

An alien who is stopped and questioned by local or state police has the right to remain silent and to refuse to answer questions about his or her immigration status. If stopped while driving, an alien must show the police a valid driver's license.

Local and state police have no authority to enforce immigration laws. They have no right to stop, question or detain an alien just because the alien does not speak English, has different skin color, or they suspect the alien has violated the immigration law.

If immigration agents come to the home of an alien, they can be denied entry unless they show a search warrant signed by a judge or magistrate authorizing them to search the alien's home. [4th Amendment, U.S. Constitution] If they forcefully insist, the alien should not resist, run, or use force.

An alien has the right to refuse to answer questions if arrested. Before a suspected alien can be deported, the United States Immigration Service must prove to a judge at a deportation hearing that the person is in fact an alien and is illegally in the United States, or has committed an offense which requires deportation. Often the Immigration Service is able to prove their case through the alien's own statement. An alien who decides to remain silent should inform the interrogators of that decision and refuse to answer further questions. [*Valeros v. I.N.S.*, 387 F.2d 921 (7th Cir. 1967); *Miranda v. Arizona*, 384 U.S. 436 (1966); 5th Amendment, U.S. Constitution]

Aliens waiting to go before a judge at a deportation hearing have the right to be released on bond or on their own recognizance pending the deportation hearing. If the bond is set too high, an alien has the right to appear before an immigration judge to request that the amount of bond be reduced. [8 U.S.C.A. § 1252(a)] At the deportation hearing, an alien has the right to be represented by an attorney (but not at any expense to the Government), to remain silent, to present witnesses and favorable evidence, as well as to confront the government's evidence and witnesses, and to apply for various ways in which to avoid deportation. [8 U.S.C.A. § 1252(b)] A decision to deport an alien must be based upon reasonable, substantial, and probative evidence. [8 U.S.C.A. § 1252(b)(4)]

Aliens who cannot afford an attorney to represent them at deportation hearings should consult with agencies and community organizations which offer free legal services. [8 C.F.R. 287.3] Call your local bar association for information on where to get free legal services.

STUDENTS AND SCHOOLS: RIGHTS AND RESPONSIBILITIES

STUDENTS' RIGHTS TO A FREE AND APPROPRIATE EDUCATION

Attendance

Young people and their parents are responsible for a minor's school attendance. Whoever has custody or control of a child between the ages of seven and sixteen must make sure that the child attends public school in the district of their residence for the entire school session, unless:

1. the child attends an appropriate private or parochial school;
2. the child is found by a competent physician or psychiatrist to be physically or mentally unable to attend school. This exception does not apply to females who are pregnant or who are mothers of children, unless the absence is due to complications of pregnancy and the complication is confirmed by a competent physician;
3. the child is temporarily excused for cause, including religious practices, by the principal, teacher or school board;
4. the child is necessarily employed, subject to the provisions of the child labor laws, and with the consent of the superintendent of the educational service region;
5. the child is over twelve and under fourteen years in attendance at confirmation classes; or
6. the child is in a special program which has been approved by the superintendent of the educational service region. [105 ILCS 5/26-1 (1994)]

Persons having custody or control of any child below the age of seven or above the age of sixteen and enrolled in any of the grades one through twelve are also responsible for the regular attendance of that child during the regular school term. [105 ILCS 5/26-1; 105 ILCS 5/26-2 (1994)]

Valid causes for absence are illness, death in the immediate family, family emergency, observance of a religious holiday, and other situations which are beyond the control of the student as determined by the district board of education, or other circumstances which give reasonable concern to the responsible custodian for the health or safety of the student.

Truancy is an unexcused absence from school for any portion of the school day. Chronic or habitual truancy consists of absence from compulsory school attendance without a valid reason for ten percent or more of the previous one hundred and eighty regular attendance days. [105 ILCS 5/26-2a (1993)]; [105 ILCS 5/26-8a (1994)] State law requires that the school provide supportive services and other school resources to the student to assist in overcoming problems which may cause chronic truancy. If these services are unsuccessful in resolving the problem or if the student or responsible custodian is uncooperative, the district or regional truant officer can initiate legal action to enforce the Compulsory Attendance Act. The truancy petition must include the supportive services, alternative programs, and other school resources the school district provided to the student, which are written in the student's temporary record.

According to state law, no punitive action may be taken against a chronic truant until all available resources have been offered. [105 ILCS 5/26-8a (1994)] Resources include supportive services such as counseling, guidance, special education placement, alternative programming, referrals to appropriate public agencies, and the adoption and implementation of school policies and procedures which address the needs and problems of chronic truants. Truancy cannot be used as grounds for excluding students from the educational services of the school.

A school district will deny re-enrollment in secondary schools to any student above the age of sixteen years who has dropped out of school and who cannot, because of age and lack of credits, attend classes during the normal school year and graduate before his or her twenty first birthday. If denied re-enrollment for this reason, the school district must provide counseling and must direct the student to alternative educational programs that lead to graduation or receipt of a GED diploma. Re-enrollment may not be denied unless the student is first afforded a due process hearing. [105 ILCS 5/26-2 (1994)]

Residency

A student is usually considered a resident of the school district in which the student's parents, guardians, or other persons having the primary responsibility for the student's care and custody reside. A student is not considered a resident of a district other than that of the parents or guardians if the student is living there only to attend the public schools of that district.

Non-resident pupils must be charged tuition if a school district permits them to enroll. If they attend the schools of the district for less than the full school year, their tuition will be pro-rated. Resident pupils who become non-residents during a school term will not be charged tuition for the remainder of the school term in which they become non-resident pupils. [105 ILCS 5/10-20.12a (1994)]

Unless provided for in some other way, educational services for an Illinois student under the age of twenty-one in a residential program designed to correct alcohol or other drug dependencies will be provided by the district in which the facility is located. [105 ILCS 5/10-20.12a (1994)]

The Education for Homeless Children Act

The Education for Homeless Children Act was signed by Governor Edgar and will be in effect as of January 1, 1995. [105 ILCS 45, Art. 1]. The purpose of the Act is to assist families who become homeless and are forced to move out of their school district to find temporary shelter. Children suffer doubly if removed from their home and school. Under the Act, children may continue to attend the "school of origin", defined as the school that the child attended when permanently housed or the school in which the child was last enrolled, or the child may be promptly transferred to the school where the child is actually living.

If parents or guardians choose to have their child attend their school of origin, they must attempt to provide transportation to the school of origin or may authorize relatives, friends or a shelter to provide transportation. If transportation cannot be provided in this way, then the school districts involved must provide transportation.

However, when travel to the school of origin is longer than one hour one way, the parents or guardians, a teacher of the child and a school social worker may meet to determine whether the travel is detrimental to the child as compared to the development and education available in attending the school nearest the child's abode. All parties must

agree that the school nearest the child's abode is the most suitable prior to transfer to that school.

Contact the Illinois Coalition to End Homelessness at (708) 742-4227 for a complete text of the Act and additional information.

Immunization and Health Examinations

The School Code of Illinois requires that all students submit proof of having received a health examination and immunization against preventable, communicable diseases before entering nursery school, kindergarten or first grade, as well as fifth and ninth grades of any public, private, or parochial school. [105 ILCS 5/27-8.1 (1994)] Proof must also be provided when a new student enrolls in an Illinois school at any grade. The health examination must have taken place within one year of the period for which proof is required.

Students who fail to submit proof of examination and immunization by October 15 of the current school year must be excluded from school until such proof is presented. [105 ILCS 5/27-8.1 (1994)] Students will be exempted from these requirements in the following cases:

1. the parent or guardian of the child objects to it on the grounds that it conflicts with his or her religious beliefs; or
2. a licensed physician states in writing that the immunization would be harmful to the child's health. [Ill. Dept. of Public Health Rules & Regulations, Rule 3]

A student will be considered in compliance with the requirement if there is evidence of intent to comply. Such evidence may be a signed statement from the physician that the necessary immunization procedures have begun or will begin, or the parent's written consent for the child to participate in a school or community immunization program.

A student who resides in an area designated as having a high incidence of tuberculosis must undergo a tuberculosis skin test as a required part of each health examination. Additionally, responsible custodians are encouraged to have students undergo dental examinations at the same time as their health examinations. [105 ILCS 5/27-8.1 (1994)]

School Fees

Students should not be denied publicly supported educational services or privileges such as classes, report cards, academic credit, record transfer, or library services due to the inability or unwillingness of parents or guardians to pay textbook or other school fees. [105 ILCS 5/10-20.13 (1994); Illinois Constitution, Art. 10, Sec. 1] The parent or guardian is legally responsible for the charges, not the student, and any action taken by the school to collect the fees should be taken against the responsible custodian.

School fees for students from indigent families may be waived. [105 ILCS 5/10-20.13 (1993)] The principal or district superintendent should be contacted for applications and/or information concerning the waiving of these fees.

Transportation and Bus Safety

All public schools and other educational institutions (kindergarten through twelfth grade) which receive public funds must offer a class in bus safety for all students who ride a bus to or from school, or for school activities. These classes must be given at least

twice during each school year and will include emergency evacuation drills. [105 ILCS 5/27-26 (1994)]

Unit, consolidated, and certain school districts must provide free transportation to pupils residing at a distance of one and one-half miles or more from any school to which they are assigned. [105 ILCS 5/29-3 (1994)]

Only authorized school administrators may take disciplinary action for incidents occurring on school buses. Due process procedures must be followed. [105 ILCS 5/10-22.6(b) (1994)]

School administrators who detain students after school who normally ride the bus are responsible for ensuring that they get home safely.

Special Education

There are many types of physical and/or mental challenges that make it difficult, or even impossible, for some students to learn in a standard school setting. Some of these challenges are readily identifiable, for example in the areas of vision, hearing, physical abilities, and speech. Others can cause severe difficulties but may be much more difficult to diagnose. These include perceptual problems, emotional disorders, medical problems and disorders, and serious social or personal problems. These challenges require professionals to determine the source of the problem and to recommend the proper program to maximize the educational development of the student. Students with any of these challenges are referred to as exceptional children because they have exceptional (special) educational needs.

The school district must provide a program to meet the needs of all persons between the ages of three and twenty one years who have exceptional needs. [105 ILCS 5/14-4.01 (1994)] Regardless of the nature or severity of the child's special need, the child has a right to receive a free and appropriate public education. [Individuals with Disabilities Education Act, 20 U.S.C. Secs. 1400-1485 (1994)]

If a student is determined to be eligible for special education, then a program designed to meet the student's needs must be provided. If parents are dissatisfied with the evaluation or the program provided for the student, they may request a review of the evaluation or the proposed program. An impartial hearing officer will then be appointed by the Illinois State Board of Education to conduct a review. If, after this review, the parents still feel that the proposed program is inadequate, an appeal may be directed to the State Superintendent of Education. [105 ILCS 5/14-8.02 (1994)]

A parent or guardian of a child who is receiving special education benefits has certain rights which are provided under state and federal statute. Further information concerning special education is available from a local school district superintendent, director of special education, regional superintendent of schools, or the Illinois State Board of Education by requesting a copy of the Special Education Rules and the booklet "A Parent's Guide to the Educational Rights of Children with a Disability."

Students receiving special education (and their parent(s) or guardian) have certain rights. In abbreviated form, these rights are as follows:

1. the right to an independent education evaluation at no expense;
2. the right to receive written notice of the evaluation procedure and placement;
3. the right to give consent before an evaluation is conducted and the right to revoke consent at any time;
4. the right to request an impartial due process hearing to question the identity, evaluation or placement of the student;

5. the right to have a full and individual evaluation of the student's educational needs;
6. the right to be educated with non-disabled children to the maximum extent possible;
7. the right to inspect and review the student's records; and
8. the right to restrict access to the student's records. [105 ILCS 5/14-8.02 (1994)]

Bilingual Education

School districts are responsible for establishing bilingual education programs for children whose first language is other than English in accordance with regulations prescribed by the State Board of Education. [105 ILCS 5/10-22.38a (1994)]

CURRICULUM/SCHOOL PROGRAMS

Students entering the ninth grade must successfully complete the following courses, in addition to other course requirements, as a prerequisite to receiving a high school diploma:

1. three years of language arts;
2. two years of mathematics, one of which may be related to computer technology;
3. one year of science;
4. two years of social studies, of which at least one year must be history of the United States or a combination of history of the United States and American government; and
5. one year chosen from a) music, b) art, c) foreign language (which may include American Sign Language), or d) vocational education. [105 ILCS 5/27-22]

These requirements did not apply to students entering the ninth grade prior to 1984, and do not apply to disabled students whose course of study is determined by an individualized education program.

All graduates must have had adequate instruction in honesty, kindness, justice, moral courage, humane education, driver and safety education, health and physical education, consumer education, career and vocational education, conservation of natural resources, and other areas mandated in *The School Code*. [105 ILCS 5/27-1 *et seq.*]

The course of study must include instruction in the principles of representative government as expressed in the American Declaration of Independence, the United States and Illinois Constitutions, the proper use and display of the American flag, and American patriotism. No certificate of graduation will be awarded to students failing to pass an examination in these subjects. [105 ILCS 5/27-3]

The State Board of Education is required to develop and distribute a model course of study concerning the reduction of self-destructive behavior for use in grades 6-12 of the public schools. [105 ILCS 5/27-23.2] Every public elementary school and high school shall include a unit of instruction about U.S. History and African American History. [105 ILCS 5/27-1 *et seq.*] In addition, every public school must provide instruction on recognizing the danger of, and avoiding, abduction, as well as prevention and avoidance of drug and substance abuse. The State Superintendent of Education must develop and distribute materials on child sexual abuse. [105 ILCS 5/27-13.2] Every public elementary school must also provide education and information on discrimination on account of sex. [105 ILCS 5/27-1 *et seq.*]

When a student has passed all subjects required by the school district for graduation, the student is entitled to graduate and receive a diploma. The school district has the right and the responsibility to establish required courses and the number of credits required for graduation; but the school has no authority to require that a student attend school solely for a certain number of semesters or years as a requirement for graduation, or solely to meet the daily physical education requirement.

A student may not be denied a diploma due to unpaid school fees or as a disciplinary measure. Students graduating early have the right to attend graduation ceremonies with their class.

Categorizing Classes by Degree of Difficulty

Illinois state law requires that student records clearly indicate class rank and the degree of difficulty of each class taken when school districts use a system of categorization. [105 ILCS 5/27-27] A local district administrator should provide upon request an explanation of the criteria upon which the grading system is based.

Physical Education

Illinois law requires that students enrolled in public schools participate daily in an appropriate physical education program. Special activities or a modified course must be provided for students who are physically or emotionally unable to participate in the standard program. [105 ILCS 5/27-6]

Students objecting to co-educational physical education classes on religious grounds can be exempted from co-educational classes. [*Moody v. Cronin*, 484 F. Supp. 270 (C.D. Ill. 1979)] This does not, however, exempt the student from physical education instruction.

Married and Pregnant Students

Married and pregnant students are entitled to receive all educational services and participate in all programs and activities of the school under the same conditions as any other student, as long as their physical condition permits. A student who is pregnant is not excused from compulsory school attendance unless a physician certifies that complications resulting from pregnancy preclude school attendance. [105 ILCS 5/26-1] School boards are authorized to provide home instruction, correspondence courses, or other means of instruction for students who are unable to attend school because of pregnancy. [105 ILCS 5/10-22.6a]

STUDENT "INDIVIDUAL" (CIVIL) RIGHTS

Freedom of Association

Generally, a student is free to join any organization or society he or she chooses while in school. However, a public school fraternity, sorority, or secret society has been declared by state law to be "inimical (harmful) to the public good," and any student who joins such an organization or tries to get other students to join is subject to suspension or expulsion. A fraternity, sorority, or secret society is an organization in which the members are chosen by the membership of the organization rather than the membership being open by free choice to all qualified students. [105 ILCS 5/31-1, *et seq.* (1993)] A public school student organization that discriminates solely on the basis of race, creed, sex, or national origin should not be permitted to use school facilities for any purpose.

In requesting the use of school facilities, a student organization may be asked to submit a copy of the organization's constitution and the names of the officers of the organization to appropriate school officials, so that the purpose, activities, and membership requirements of the organization may be examined.

De Jure Segregation and Discrimination on the Basis of Color, Race, Nationality, Sex, or Religion

School segregation which is the intentional result of actions or failures to act on the part of public officials is a violation of the 14th Amendment to the United States Constitution and (if the local district is a recipient of federal funds) Title VI of the Civil Rights Act of 1964. Segregation is also prohibited by *The Illinois School Code*. [105 ILCS 5/10-22.5 (1993)]

When the State Board of Education receives a complaint signed by at least 50 residents of a school district or 10% of the residents (whichever is less), alleging either that students have been excluded from or segregated on the basis of their color, race, nationality, sex, religion, or religious affiliation or that school employees or applicants for employment have been discriminated against on the same bases, the State Board shall notify the local school board of the complaint and, within 30 days, set a date for a hearing on the allegations. If the State Board determines that a violation exists, it shall send its findings to the Illinois Attorney General for legal action. [105 ILCS 5/22-19 (1993)]

For more information concerning state requirements for the elimination and prevention of racial segregation and discrimination in schools, contact the Office of the State Superintendent of Education, 100 North First Street, Springfield, Illinois 62777.

Dress and Grooming

Students have the right to dress and groom themselves according to their personal tastes, as long as it does not present health or safety hazards, is not lewd or indecent, or does not substantially disrupt the educational process. Gang signs or colors may, however, be excluded. Dress and grooming codes must not restrict this right even if students or community groups draft the code. Individual differences in dress and grooming preferences are matters of personal freedom. Call the Illinois State Board of Education for information on school uniforms. [*Holsapple v.* Woods, 500 F.2d 49 (7th Cir.), *cert. denied*, 419 U.S. 901 (1974); *Crews v. Cloncs*, 432 F.2d 1259 (7th Cir. 1970); *Breen v. Kahl*, 419 F.2d 1034 (7th Cir. 1969)]

Sex Bias and Discrimination

Both federal law [Title IX of the Education Amendments of 1972] and state law prohibit educational institutions from discriminating against students on the basis of sex. [20 U.S.C. §§ 1681 *et seq.* (1990); 105 ILCS 5/10-22.5, 5/27-1 (1993)]

Under both federal and state laws, female and male students are guaranteed equal treatment in:

1. access to courses (including physical education and vocational education);
2. counseling and guidance;
3. student services, benefits, financial aid, and insurance coverage;
4. rules and regulations affecting student behavior, dress, and discipline;
5. policies relating to marital or parental status;

6. extra-curricular activities, including athletics, competitive sports, music and drama events, clubs and other organizations; and
7. every aspect of the educational system impacting either directly or indirectly on students.

Regulations of the State Board of Education specify that in all classroom activities, both sexes shall be treated fairly and equally. [23 Ill. Adm. Code 1.240]

Title IX regulations issued by the U.S. Department of Education require each school to identify a coordinator for district efforts to eliminate sex discrimination and to establish a grievance procedure through which students may present problems of suspected sex discrimination for resolution. The responsibility for Title IX enforcement now lies with the U.S. Department of Education's Office of Civil Rights. Schools are required to inform students of the name, address, and telephone number of the Title IX Coordinator, the use of the grievance procedure, and their right to present questions of sex discrimination directly to the Office of Civil Rights. [34 C.F.R. 106.8, 106.9]

Speech and Expression

In *Tinker v. Des Moines Independent Community School District No. 21*, 393 U.S. 503 (1969), a landmark case, the Supreme Court of the United States decreed that:

> Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the State must respect, just as they themselves must respect their obligations to the State.

Political expression, social expression, and expressions of criticism or dissatisfaction with the educational system and educational officials are all constitutionally protected communications, unless they cause substantial disruption to education. However, a student's right to free expression is not coextensive with the rights of adults or even children in other settings and must be exercised in light of the special characteristics of the school environment. For example, buttons, arm bands, posters, and handouts may be permissible. Gang symbols are not. School officials may reasonably regulate the time and place of speeches, assemblies, and distribution of literature and handouts. Controversy or unpopularity of an expression does not always constitute disruption of the educational process.

Student Publications

Independent publications by students may be distributed in the school at the places and times established by the school. School officials may not prohibit the distribution of such publications unless they can reasonably forecast that the publication and distribution of the material to the students will substantially or materially disrupt the educational process. Offensive statements, controversial articles, or critical remarks about school officials do not necessarily constitute a disruption of educational activity. [*Fujishima v. Board of Education*, 460 F.2d 1355 (7th Cir. 1972); *Scoville v. Board of Education of Joliet Township High School District 204*, 425 F.2d 10 (7th Cir. 1970); 23 Ill. Adm. Code 375] The expression of controversial or critical viewpoints is protected by the First Amendment to the United States Constitution so long as it does not actually cause disruption or violence.

School sponsored publications, in contrast, are subject to greater review and restriction. School officials may impose reasonable restrictions on such publications'

content as long as their actions are reasonably related to legitimate educational concerns. [*Hazelwood School District v. Kuhlmeier*, 108 S.Ct. 562 (1988)]

Student Records

Federal regulations and laws [20 U.S.C. § 1232g (1990); 34 C.F.R. Part 99], and Illinois regulations and laws [105 ILCS 10/1-10 (1993)] detail the rights and responsibilities of students, parents, and school officials with respect to student records and rights to privacy. Following is a summary of certain of the major provisions of these regulations and laws.

1. A student's permanent record shall contain minimum personal information which may include name, birth date, address, grades, grade level, parents' names and addresses and attendance records. The permanent record is kept for 60 years after graduation or permanent withdrawal.
2. The student's temporary record contains all information not included in the student's permanent record, including family background information, test scores, psychological evaluations, special education files, teacher anecdotal records, supportive services provided, disciplinary information, and a record of all releases of temporary records. The temporary record is reviewed to eliminate out-of-date information and is destroyed entirely within five years after transfer, graduation or permanent withdrawal.
3. Parents have the right to:
   a. inspect and copy all information contained in the student record. Schools may charge reasonable costs for copying. However, no parent or student may be denied a copy of the student's school records because of an inability to pay such costs. [105 ILCS 10/5(d) (1993)]
   b. challenge the contents of the records -- except grades -- on the bases of accuracy, relevance and/or propriety, by notifying the principal or records custodian of the objection to information contained in the record. An informal conference must be scheduled within 15 school days to discuss the matter. If the question is not resolved, a formal hearing, conducted by a hearing officer not employed in the attendance center in which the student is enrolled, will be scheduled. [105 ILCS 10/7 (1993)]
   c. request and receive copies of records proposed to be destroyed. The school must notify parents of the destruction schedule for student records.
   d. inspect and challenge information proposed to be transferred to another school district in the event of a student transfer.
4. Local, state, and federal educational and governmental officials may have access to student records for educational, administrative, and other purposes defined by law without parental consent. Student records may also be released, without parental consent, pursuant to a court order or subpoena, and in emergency situations where the records are needed to meet a threat to the health or safety of the student or other persons. All other releases of information, except in an emergency, require the informed, written consent of the parent or eligible student, or notification of the proposed release and of their rights to challenge the records. Parents must be notified of the release of records because of court order or subpoena.
5. Schools are allowed to publish student directories which list student names, addresses and other identifying information which complies with State Board

regulations. Parents may request that any and all information not be released. [105 ILCS 10/6(e) (1993)]

6. No person may force a parent or student to release information from the temporary record in order to secure any right, privilege, or benefit including employment, credit or insurance.
7. All rules and regulations adopted by any school relating to student records shall be available to the public, and all regulations of the State Board governing student records shall be available to the public. [105 ILCS 10/3(a), (b) (1993)]

DISCIPLINE/SUPERVISION

General Discipline

When a student commits an act of gross disobedience or misconduct as defined by the school board, the student's right to an education may be temporarily suspended. [105 ILCS 5/10-22.6 (1994)] However, no governmental agency, such as a school, may deprive a student of rights without due process of law. A student is entitled to procedural due process and must be allowed to present a defense, to explain the circumstances of the actions in question, or to prove innocence.

Subject to these due process rights, a student may be suspended or expelled from school, the school bus, or extracurricular or athletic activities. The basic differences between suspension and expulsion are as follows:

1. A suspension is not to exceed ten school days. An expulsion is from 11 days to the end of the current school year; generally, it may not exceed the remainder of the current school year. [1974 Ill. Atty. Gen. Op., S-709; *Board of Education v. Helston*, 32 Ill. App. 300 (1890)] However, federal law will soon require the states to mandate expulsion for no less than one year of any student who possesses firearms on school property.
2. The local district board of education, district superintendent, principal, assistant principal, or dean of students may suspend students; only the local board of education can expel a student.
3. A student may be suspended before an informal hearing is held; a student may not be expelled until after a formal hearing.

Suspension

The United States Supreme Court has held that prior to a suspension the following procedures must be observed:

1. the official executing the suspension must give the student oral or written notice of the charges and evidence to support the charges; and
2. a student who denies the charges must be given an opportunity to present an explanation in a conference with the suspending school official. The school official must then inform the student whether or not the suspension will stand.

The Court also stated that a student whose presence poses a continuing danger to persons, property, or an ongoing threat of disruption of the academic process may be immediately removed from school. In such cases, the requirements of suspension proceedings should follow immediately. [*Goss v. Lopez*, 419 U.S. 565 (1975)]

In addition to the procedures required by the United States Supreme Court, an Illinois statute and a Federal Court of Appeals decision outline the following procedures to be followed in suspension cases. [105 ILCS 5/10-22.6 (1994); *Linwood v. Board of Education, City of Peoria School District No. 150*, 463 F.2d 763 (7th Cir. 1972)]

1. A student may be suspended by the board of education or, if authorized by the board, the district superintendent, principal, assistant principal, or dean of students. The student's parents must be notified of the suspension immediately by the dean of students, principal, or superintendent. The parents must also receive a full statement of the reasons for the suspension, a notification of the number of days of the suspension (which may not exceed ten school days), and notification of their right to seek school board review of the suspension. [105 ILCS 5/10-22.6 (1994)]
2. At the parents' request, the school board or a hearing officer appointed by the board will review the suspension. At this session the parents may discuss the suspension with the board or the hearing officer. The student may be represented by a lawyer (at the student's expense) and has the right to question the person who made the decision to suspend, the right to present and question witnesses, and the right to put forward a defense.
3. If requested by the student, the parent or representative, a record will be kept of the proceedings.
4. If a hearing officer is appointed by the board, the hearing officer shall report to the board a written summary of the evidence presented at the hearing. After the hearing or upon receipt of the written report of the hearing officer, the board may take appropriate action.
5. All references to a student's suspension are placed in the student's temporary record, which shall be destroyed within five years after the student has transferred, graduated or otherwise permanently withdrawn from the school. [105 ILCS 10/1 *et seq.* (1994)]

Expulsion

In expulsion cases, the following procedures are required:

1. The student and the student's parents must be notified by registered or certified mail of the reasons for the recommended expulsion, including a full statement of the reasons for dismissal, the length of the expulsion and the date, time, and place of the school board hearing. The proposed expulsion does not take place until after the school board hearing.
2. At the hearing by the school board, the student may be represented by counsel *at the student's expense*, and has the right to: question the person who made the recommendation to expel; present evidence; call and question witnesses; and make a personal statement.
3. If requested by the student, the parent or representative, a record of the proceedings will be kept.
4. If a hearing officer is appointed by the board, he or she shall report to the board a written summary of the evidence heard at the meeting and the board may take such action as it finds appropriate. [105 ILCS 5/10-22.6 (1994)]

In the interest of helping students, the school district may assist in providing or locating alternative educational opportunities for a suspended or expelled student. These alternatives could include homebound or telephone instruction, reading lists, adult evening classes, or alternative school settings. The Illinois State Board of Education provides information and assistance to school districts and students interested in educational alternatives within a school or off campus.

A student may be suspended from the school bus for gross disobedience or misconduct, following the same procedure as required in any other suspension. The school board may suspend the student in excess of ten school days for safety reasons.

It should be noted that students are under the jurisdiction of school personnel at all activities conducted within the school program including events outside the school. [105 ILCS 5/24-24.(1994)]

Corporal Punishment

Corporal punishment is defined as punishment applied directly to the body. Each school board must establish a policy on discipline, which shall prohibit slapping, paddling, prolonged maintenance of students in physically painful positions, and intentional infliction of bodily harm. The policy shall provide that a teacher may use reasonable force as needed to maintain safety of other students, school personnel or persons, or for the purpose of self defense. [105 ILCS 5/24-24 (1994)]

Parents who object to their children being corporally punished can prohibit its use by written request. The local district must notify parents of this right when the student is first enrolled in school. [23 Ill. Adm. Code 1.280]

Grievance Procedures

Although many school districts have no formal procedures established for the resolution and appeal of grievances, the usual process is as follows:

1. The student or the parents should discuss the matter with the person(s) directly responsible for the grievance.
2. If this does not resolve the issue, the matter should be directed to the building or school principal and then to the district superintendent. If the grievance is against the principal, the district superintendent should be contacted after talking with the principal.
3. If the matter is still not solved, the student or parents may request the permission of the school board president to speak on the matter at the next meeting of the local board of education.
4. Unless otherwise provided by local board rules and regulations, the next step would be through the judicial system.

The Illinois School Code or other pertinent rules and regulations (available at the local library or through the district superintendent) should be consulted to determine the rights and responsibilities of all persons involved. Local school officials should be contacted for information on specific school district appeal procedures.

SCHOOL PROPERTY

Violence and Vandalism

Students and their parents may be liable for acts of violence or vandalism committed on or against school property, and involving school employees or other students. See "The Family Relationship" and "Society's Controls" for more information on this subject.

School Lockers and Student Searches

On one hand, a student's school locker is the property of the school and must be used for the purposes intended (a storage area for books, school supplies, and outdoor garments). Additionally, school teachers and administrators need to maintain order in schools.

On the other hand, the United States Supreme Court has held that the Fourteenth Amendment of the United States Constitution protects students against encroachment by public school officials, even while at the school. Thus, a student is protected from "unreasonable" searches while at school. Due to these competing interests, in order to search a student's locker, the teacher or administrator need not have probable cause that a law is being broken. Rather, the legality of the search depends upon its reasonableness, under all of the circumstances. [*New Jersey v. T.L.O.*, 469 U.S. 325 (1985)] This standard obviously gives school officials significant leeway to cause lockers to be searched.

Law enforcement officials who wish to search lockers should possess a valid search warrant.

STUDENT AND COMMUNITY INVOLVEMENT

Each community shares with the State the responsibility for educating its citizens. Students, as recipients of educational services and programs, and parents and community members, as supporters of the school system, evaluate the quality and effectiveness of those programs and services offered by the school district. Public education in Illinois has traditionally adhered to the concept of local control of the schools. It is the responsibility of the local school board and the local district citizens to ensure that the educational program is responsive to the needs of the community. It is imperative that local districts provide avenues of involvement in the governance of the district for all segments of the community and that pupils and parents take advantage of these avenues for affecting school policy.

In recognition of the significant contributions of students to an effective educational program, the Illinois State Board of Education adopted the following resolution:

> " . . . Recognizing the potential value of student involvement in the deliberations of school boards, and recognizing the educational value students may derive from such participation, the Illinois State Board of Education urges all school boards to provide for student participation through such means as advisory boards, task forces, non-voting membership, or other devices appropriate to local conditions."

MATERIALS AVAILABLE FROM CRFC

For pricing information or to place an order, call (312) 663-9057.

Chicago Directory of Law-Related Education Resources

All Grades

This compendium for Chicago metropolitan area law-related educators lists and describes organizations that provide outside resource people, speakers, field experiences and/or materials on a wide variety of law-related topics.

From the School Newsroom to the Courtroom

High School

This supplemental resource builds on an examination of the Supreme Court's decision in the 1987 landmark case of Hazelwood v. Kuhlmeier, in which three high school seniors took their principal to court over censorship of the school newspaper. It includes a series of lessons based on First Amendment freedom of expression rights.

Illinois Law Polls: 1990-1994

Grades 7-12

Each year the Law Poll stimulates student discussion across the state about pivotal local, state and national legal issues. This collection of Law Polls of the 90's provides a snapshot of the evolving law and a wealth of options for classroom experiences.

It's Yours: The Bill of Rights

Grades 7-12

Middle and high school students with below grade-level reading skills and students studying English as a second language use this supplemental text to build a basic understanding of the U.S. legal system. Topics include structure of the U.S. government, free speech, equal protection, religion, and rights of the accused. The use of outside resource persons is emphasized. Available from Steck-Vaughn Co. (800) 531-5015

Punishing Hate - Protecting Expression: A Democracy's Dilemma

Grades 9-12

This multi-lesson supplemental text, released in 1994, helps students explore the phenomenon of hate crime in America, the development of laws in response to hate crime and whether these laws violate the First Amendment.

The *Working Together* Series

Grades 5-8

This series originally was developed for Chicago Public School students who study the U.S. Constitution in the eighth grade. It presents a variety of interactive teaching strategies for middle school students. Each lesson is free-standing and can be infused into social studies, U.S. history and government courses. Participation by community resource people is featured.

Working Together: We the People

This is the original set of 15 lessons for eighth grade students, which can be readily adapted for all middle school grades.

Working Together: Lessons in Justice

This latest CRFC publication features ten new interactive learning experiences for all middle school grades.

Service Learning in the Social Studies

Middle and High School

This 12-page publication introduces educators to a model of service learning that emphasizes the exploration of public policy as it relates to social issues in the community. It includes a step-by-step process for implementing service learning, as well as resource lists for additional assistance. Designed for use with high school students, it can readily be adapted for upper middle school.

Constitutional Rights Foundation in Los Angeles

The Constitutional Rights Foundation Chicago's sister organization, Constitutional Rights Foundation in Los Angeles, also produces many worthwhile publications. Some of their most popular titles are...

- *Criminal Justice in America*
- *Police Patrol*
- *Of Codes and Crowns*
- *Reviewing the Verdict*

For pricing information or to place an order, call CRFLA at 1-800-488-4CRF.

CRFC PROGRAMS - ILLINOIS*

Law in My Life: U.S. Constitution Program for Chicago Elementary School Students
Also referred to as the lawyer-in-the-classroom project, this program teams volunteer lawyers with fifth and eighth grade teachers. The teams are trained in the use of participatory exercises found in the CRFC curriculum *We the People: Working Together.*

CRFC/Close-Up Program
Teams of high school students across the state travel to Springfield to meet in the Illinois General Assembly and debate legislation pertaining to a particular problem.
Students interview experts on alternative solutions to the problem. The teams share their deliberations with their classmates and develop plans for action projects in their schools or communities.

Learn Justice - Live Justice, the Illinois Law-Related Education Program (ILREP)
Learn Justice - Live Justice provides teacher training, leadership development, and an annual statewide conference for teachers. Each year, CRFC has targeted new regions in the state, identifying teachers and schools interested in introducing or strengthening a law-related education program.

Authentic Assessment
The Social Science Education Consortium selected Illinois as one of five states to develop and field-test new methods for assessing student performance to replace pen and pencil tests. Several master teachers are experimenting with moot courts and discussions.

Service Learning
In the "Empowering Youth Through Civic Participation" program, high school government classes study a critical issue in their community, create a plan to address the issue and implement the plan. The program helps students acquire the vision and leadership skills necessary to become committed, effective citizens.

Law Week
Each year, CRFC, in cooperation with the Illinois State Bar Association and the Illinois State Board of Education, publishes the Illinois Law Poll—a synopsis of critical, controversial issues facing American society. During Law Week, schools throughout Illinois sponsor conferences where students consider and debate the issues raised in the Poll.

Elrod Scholarship
Named for a former Cook County Sheriff, the award is given to students who volunteer to help solve a community problem and write essays about their experiences and suggest ways in which these problems may be solved.

*Programs can be developed or adapted to fit school district needs.

CRFC PROGRAMS - NATIONAL*

Youth for Justice (formerly the National Training and Dissemination Program)

CRFC is part of a nationwide team coordinating and implementing a national law-related education program funded by the U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention for schools, clubs, and juvenile correctional settings. The program, which began in the late 1970s, offers training and technical assistance in delinquency-preventing, law-related education. Studies have shown that, when properly implemented, the program reduces juvenile delinquency.

The program is available to all states. It currently operates in 49 states, the District of Columbia, and Puerto Rico. CRFC collaborates on the project with CRF in Los Angeles, the American Bar Association's Youth Education for Citizenship Committee, the Center for Civic Education/Law in a Free Society, the National Institute for Citizen Education in the Law, and Phi Alpha Delta law fraternity.

Over the years, several initiatives have been established within this program, including:

THE DRUG INITIATIVE
THE JUVENILE JUSTICE INITIATIVE
THE URBAN INITIATIVE
THE VIOLENCE INITIATIVE

This newest initiative involves research and development activities in Chicago, Los Angeles, and the District of Columbia, as well as a national conference and nationwide Youth Summit on violence and how law-related education can help to reduce youth violence.

National Service Learning Program

Learning by serving the community is a time-honored method in education. Through a grant from the DeWitt Wallace Foundation, CRFC staff in cooperation with Close-Up and the Constitutional Rights Foundation in Los Angeles provides training and technical assistance to school systems as they create service learning programs integrated into their curriculums.

English as a Second Language (ESL) Bill of Rights Program

Young immigrants and children of immigrants face a double hurdle of learning the English language and understanding United States legal and political systems. CRFC ESL program includes curriculum and staff development for teachers in ESL and in social studies. The program stresses cooperative learning, critical thinking, and the use of outside resource people from immigrant communities.

*Programs can be developed or adapted to fit school district needs.